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Using the dispute settlement mechanism (DSM) as an indicator for the participation of developing nations in WTO.

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Abstract

The dispute settlement mechanism (DSM) of the World Trade Organization (WTO) can best be described as a referee in a boxing match between two opponents from two different countries. Each has his own tricks and strategies, but without a referee the match would be unfair and unregulated. While this undeniably reflects its performance, the program is far from flawless and has received scrutiny from inside and outside the ranks of its users. This paper presents an analysis of more than 20 years of the WTO DSM, with emphasis on issues if developing counties can use the DSM as indicator for their continuous participation in the WTO. The questions analysed include: Who are the Member States that use the WTO DSS? Is it used equally by developed, developing and least-developed countries? Are developing countries more likely to resolve disputes than wealthy ones? Is there a correlation between the Gross Domestic Product (GDP) or GDP per capita of WTO members and the extent to which they are using the system? What is the extent to which Member States comply with the DSB 's binding recommendations? Who are the members who do, and who are the ones who do not? How long do the DSM procedures take on average, from the consultation request to the adoption of recommendations?

Keywords: World Trade Organization; Dispute Settlement; Participation; Compliance; Developing Countries.

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LIST OF ACRONYMS

AB Appeals Body

AD Anti-Dumping

AoA Agreement on Agriculture

CVM Countervailing Measures

DSB Dispute Settlement Body

DSM Dispute Settlement Mechanism

DSU Dispute Settlement Unit

GATT General Agreement on Tariffs and Trade

GDP Gross Domestic Product

GNI Gross National Income

IMF International Monetary Fund

OCED Organisation for Economic Co-Operation and Development

SCM Subsides and Countervailing Measures

SSG Special Safeguard

WTO World Trade Organisation

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Section 1: INTRODUCTION

1.1 Introduction

The dispute settlement mechanism (DSM) of the World Trade Organization (WTO) can best be described as a referee in a boxing match between two opponents from two different countries. Each has his own tricks and strategies, but without a referee the match would be unfair and unregulated. Yet there have been calls by some scholars and national leaders for the removal of the referee. One might ask "why, is it because they fell this organisation does not treat all its members equally or is biased against it smaller members.

The WTO underpins 96% of global trade. By one recent estimate, membership of the WTO or General Agreement on Tariffs and Trade (GATT), its predecessor, has boosted trade among members by 171%. When an iPhone moves from China to America, or bottles of Scotch whisky from the European Union to India, it is the WTO's rules that keep tariff and non-tariff barriers low and give companies the certainty they need to plan and invest (*Economist*, 2019).

The aim of the WTO is to offer a platform for negotiating treaties aimed at reducing obstacles to international trade and maintaining a level playing field for all, thus leading to global growth and development (WTO, 2019a). Girvan and Cortez (2013) noted that issues of asymmetric power "i.e. differences in status exist between members within the organizational hierarchy and how these differences result in differential ability to take action or cause action to be taken" related to the WTO's governance are particularly reflected in the use of the DSM. It is not with respect to the transparency of the process or the independence of its rulings that this asymmetry exists, but rather because of the issues related to access and the use of remedies (retaliatory measures) by small, developing countries. This is even the case when a developing country receives a favourable ruling against a member state found to have fallen foul of WTO rules.

Multilateral organisations can influence countries and resolve an issue when it may be difficult for a single bilateral donor to do so. Nevertheless, several scholars and academicians have described multilateral organisations as being an instrument of the global North working in its favour and that the global South might be better off in the absence of these organisations (Bayer & Urpelainen, 2013). Multilateral arrangements are meant to develop international standards as well as the flexibility benefits of a wider market. As the tariffs in most product categories in countries are relatively low, non-tariff barriers to both goods and services have now become the focus of trade negotiations.

Several commentators and scholars out of disappointment have suggested that "South" (developing and emerging markets economies) as compared to "North" (developed nations mainly OCED countries) can be better off without the WTO. "World trade is unequal and WTO rules are part of the problem" (Cameron,2007). Khor (2000) is of the view that one of the major categories of problems of implementation of the Uruguay Round is the way the northern countries have not lived up to the spirit of their

commitments in implementing (or not implementing) their obligations agreed to in the various Agreements.

Narlikar (2006) asks whether there is fairness in the hard bargaining and horse-trading associated with international trade negotiations. But the most important question anyone should ask is what meant by "fair". The oxford dictionary describes "fair" as acceptable and appropriate in a particular situation, which supports the argument that being fair is subjective, and an impartial judgment requires a reasoned examination of the evidence and arguments. On the other hand, one of the principal objectives of DSM was to create a fairer system, in which every member could bring forward a complaint, have it fully investigated, obtain a ruling on the compatibility of the measure or practice with WTO rules, and – more generally – "to have its day in court". The guiding principle was intended to be: 'Every member is equal before the law', and this was designed to lead to fairer and more equal opportunities than a system where power politics could, and does, influence the results (Abbort, 2008). Bütler & Hauser(2000) mention rents and costs accrued during the long litigation process as an important determinant of the pay offs of both the complainant and the plaintiff in a dispute case Also Nordström (2005) is of the opinion that the cost of using the system is a reason for the limited participation of LDCs.

Between the entry into force of the WTO on 1 January 1995 and 31 December 2019, a total of 593 requests for consultations were circulated to the WTO membership. Fifty-one WTO Members have initiated at least one dispute, and 60 Members have been a respondent in at least one dispute. In addition, a total of 88 Members have participated as third party in proceedings between two or more other WTO Members. Overall, a total of 109 Members have been active in dispute settlement, as a party or a third party (WTO, 2019b). During this period 125 of the dispute were initiated by developing countries, with more than 70 instigated against developed country members.

There are no classifications for "developed" and "developing" countries at the WTO. Members announce their country status for themselves. However, other members can challenge the decision of a member to make use of provisions available to developing countries due the special provisions enjoyed as a developing nation under the various WTO agreements. Since the WTO has no definite definition for developing and developed countries, for the purpose of this study the IMF classification of developing and developed nations in their World Economic Outlook Database,(IMF, 2018) is adopted. Per that classification the "developing countries" (South) comprises countries from Africa (including South Africa), most of Asia (including China and India), Latin America and the Caribbean and Eastern Europe i.e. emerging economies are also included here . Developed nations (North) is comprised of Western Europe and North America and the G6 countries.

The Uruguay Round (UR) outcomes of the WTO, for instance, have expanded to include laws that influence domestic politics directly. The current stress issue applies primarily to two reasons. First, in the 1980s and 1990s, the policy strategies pursued for many developing countries did not contribute to the necessary economic growth even thought

these policies were very different (World Bank, 2005). Second, the increased internationalization of markets and the resulting stronger influence of foreign influences on national growth have, in many instances, undermined the efficacy of domestic policies. Accordingly, perspectives that give less importance to proactive macroeconomic and sectoral policies, such as the World Bank (2005) or Sachs (2005) and Spence (2008), would argue that there is less need for moving away from the macroeconomic and exchange-rate policy assignments of the 1980s and 1990s, and that globalisation forces and international rules and commitments imply fewer constraints on effective policy-making than is argued by a heterodox perspective of development policy-making.(Mayer, 2009)

This paper seeks to weigh in on a debate related to whether developing country membership in a multilateral institution such as the WTO is good or bad for them. That is, whether it makes sense for developing countries to give up the right to use trade policy as they see fit for their development purposes just to be members of the organization. More specifically the problem addressed here is whether the DSM has been useful for developing countries and can it be used an indicator for continuous participation or not. By looking at the DSU, the intent is to examine and answer questions such as: (1) to what extend are developing countries using the DSM as compared with developed countries?; (2) have developing countries challenged other member states and won their cases against developed countries on the basis of economics, legality and/or on the special provisions provided to developing countries in WTO rules?; (3) do developed countries complied with rulings when they lose against developing nations; (4) how long do disputes take at the DSM? It must be said clearly that just because a developing country loses a case it is not because the WTO is rigged against them. It is whether the cases they win or lose are based on sound economic and legal reasoning, given the special provisions available to developing countries (Gracia, 2019).

This study will try to answer the above task by examining DSM reports and rulings in a more qualitative manner with quantitative figures such as tables and graphs in an effort for a more solid conclusion. In collaboration with data on GDP and GNI of the countries.

Most of the cases that developing countries are involved with have to do with goods and products involving agricultural and agro-industrial products like textiles, oilseed extraction, brewery, fruit and vegetable processing, etc . there have also been significant disputes involving emerging economies in the sectors of machinery and mechanical production.

The main of objective of this study is to determine whether developing nations are better off with the WTO by using the DSM as an indicator of their participation within the organisation whether their treatment in the DSM reflects fairness and the opportunity exist shielding them from power politics or asymmetric power. The data set use in this study is drawn from the DSM report on disputes from 1995 to 2019 and various studies relating to the subject matter. the Gross Domestic Product (GDP) or GDP per capita of

WTO members will used to examined if there is correlation between Members and the extent to which they use the system?

1.2 Organization of this study

The remainder of the paper is structured as follows: In Section 2 the background of the DSM is discussed and, the various trade disputes. Section 3 focusses on economics behind trade disputes and summarizing the related literature. section 3 defines the data and methodologies used in the analyses Section 5 presents and discuss the results of the analysis the Section 6 offers concluding remarks.

Section 2: BACKGROUND

2.1 WTO background

The WTO is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably, and freely as possible (WTO, 2019c). Founded in 1995, 164 countries representing 98% of the world have concluded and ratified, under the Treaty of Marrakech, under the General Agreement on Tariffs and Trade (GATT).

The treaty includes three fundamental principles. First, members are not permitted to discriminate between trading partners who are also WTO members, all of whom are granted the status of the most favoured nation. Member states laws and regulations shall treat foreign firms in the same way as businesses in their own country. Public law essentially forbids practices that are punitive or defensive. Second, members are expected to eliminate non-competitive activities such as export subsidies and dumping (exporting at a rate below the cost usually charged) that offer countries a competitive advantage that is not attributable to their industry's performance (Sinclair, 2000). Third, members are encouraged to pursue development and adopting economic reform. Development is assisted by the WTO framework. In preparation for adopting the agreements of the framework, developing countries require stability. And the deal itself inherits prior clauses from GATT allowing developing countries to obtain preferential funding and trade concessions.

The WTO Appeals Body (AB) known as the WTO Dispute mechanism (DSM), formed in 1995, hears cases regarding trade disputes and provides the right to restricted retribution in cases where there has been violation. Countries mainly comply with WTO rules so that the system reinforces itself. If some country thinks another has transgressed, it can file a formal lawsuit instead of initiating a one-on-one argument. A country can appeal if the ruling of the WTO is disliked by one of the parties. The judgments of the AB punch together the initial judgment. If the country's regulations or programs are found to be in violation of the WTO trade rules and refuses to bring their laws into conformity, the winner will be able to impose tariffs to the extent of the damages that the judges of the panel have assessed. This penalty is the deterrence against a violation of the rules, but this is the case when the country is large.

2.1.2 WTO is an improvement over GATT in dispute settlement

The dispute settlement mechanism of the GATT was based on Articles XXII and XXIII of GATT 1947. Article XXII instructed GATT member states to use consultation to settle their disputes, and if this was unsuccessful it empowered the whole membership as an organ to consult with the disputing parties in order to end the dispute. Article XXIII specified what constituted a dispute and how such matters should be raised. It went on to instruct the whole membership to respond to a dispute by investigating and making appropriate recommendations to the disputing parties or giving a ruling on the matter. Finally, it permitted the GATT member states to authorise retaliation in a dispute (Alavi, 2008).

The GATT dispute system was consultation based on bilateral understanding between the two dispute parties the weaknesses of the consensus approach adopted by that "quasi-institution". Under this approach, a defending party was able to prevent the establishment of a GATT dispute resolution panel. Moreover, the unsuccessful party in a GATT panel report (or indeed any party) could block the adoption of the report. Even if a panel report was adopted, the unsuccessful party could refuse to comply with impunity, blocking any request for retaliation by the working party.

While dispute settlement under the GATT originally involved only political and diplomatic approaches, through a succession of agreements and procedural understandings it had already become, by the end of the Uruguay Round, almost a completely rules-based system that included delegation of authority to independent panels (Hudec, 2002). Despite the progressive legalization of GATT dispute settlement, one significant feature remained unchanged: the ability of a contracting party, usually the responding party, to use the practice of consensus decision making to block the adoption of the final panel report, which was required to give it legal effect. The possibility of a veto meant that GATT panels had to be constrained in their legal reasoning and findings to increase the chances that their reports would be accepted by responding parties. Once a responding party agreed to the adoption of a report, however, it was quite likely to comply with the outcome (Hudec, 1993).

As a consequence, while the GATT panel recommendations enjoyed a strong degree of political legitimacy and high enforcement rates, the more controversial trade disputes could not be settled by structured dispute resolution procedures. The Uruguay Round talks culminated in a substantial rise in concrete trading agreements for leaders of the current WTO. To render these current agreements more effective, the GATT conflict resolution processes of the existing DSM have been streamlined and improved. The most significant breakthrough was to allow a variety of main steps of the DSM, including the implementation of final results, subject to unfavourable (or reverse) majority decision-making, which eliminated the power of particular participants to obstruct the advancement of the dispute. A second significant innovation was a mechanism for appellate review. This was introduced only late in the negotiations to overcome concerns about automatic adoption of bad panel reports and to ensure consistency and coherence across disputes (Steger, 2006).

The DSM of the WTO is therefore a hybrid. The ad hoc panels of experts that emerged under the GATT were retained with only minor changes. Layered on top of this is the more institutionalized and judicialized AB, tasked with reviewing issues of law and legal interpretation developed by panels*(WTO,1996.DSU, art 17.6*) in accordance with customary rules of interpretation of public international law despite the conscious move toward legalization and judicialization, however, the negotiating history, architecture and text of the DSU indicate that the intention was never to create an independent judicial system (Steger and Steinberg, 2006). For instance, the DSU does not grant panels or the AB any inherent or ongoing jurisdiction. Instead, they are subordinate to the DSB, the governing body. This is confirmed by the fact that their mandate is to make findings as will assist the DSB in making recommendations and rulings *(WTO,1996*

DSU, arts 7, 11) their reports acquire binding legal status only once adopted by the DSB, and they are subject to strict timelines for circulating their reports, the AB more so than panels.*(WTO ,1996. DSU art 22*). Lastly, the text of the numerous clauses of the DSU confirms the subordinate status and function of WTO adjudicators to the DSB (WTO, 1996).

The whole procedure of adjudication could take up to three years. However, at any stage of the process, nothing prohibits WTO members from reaching a mutually agreed solution (MAS). A MAS must be notified to the DSB where any member of the WTO may raise questions about its compatibility with WTO rules (Hoekman, 2000).

2.1.3 Various stages of DSM

The Agreement on Rules and Procedures for the Resolution of Disputes of the WTO lays out a range of procedures for settling disputes that emerge between WTO Members over their rights and responsibilities under the WTO Agreement. Adjudication by ad hoc panels and the AB are the most employed forms of dispute settlement. It is necessary to resolve disputes in a timely and organized manner. It helps to avoid the adverse consequences of unresolved foreign trade conflicts and to reduce the imbalances between powerful and weaker players by making their disputes decided on the basis of laws rather than possessing the power to determine the result. This section will give a broad overview of how disputes are handled the DSM to ensure equality before the law.

Table 1 shows a breakdown of approximate periods for each stage of a dispute settlement procedure, the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate. Any WTO Member that considers that a benefit accruing to it under a WTO Agreement is being impaired or nullified by measures taken by another WTO Member may request consultations with that other Member. WTO Members are required to accord "sympathetic consideration" to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former. All such requests for consultations shall be notified to the Dispute Settlement Body (the "DSB") and the relevant Councils and Committees by the Member, which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint. As stated by Article 4.2-4 DSU (Unctad,2003).

If consultations between the parties fail to settle the dispute within 60 days of the receipt of the request for consultations, the complaining party may request the DSB to establish a panel to adjudicate the dispute. The request for establishment of a panel must be made to the DSB in writing and must indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. The DSB establishes the panel at the latest at the DSB meeting following the meeting at which the request for the establishment first appears as an item on the agenda, unless at that meeting the DSB

decides by consensus not to establish a panel (reverse consensus). It is clear that the latter is not likely to happen and that, therefore, the establishment of a panel by the DSB is “quasi-automatic”. Per DSU article 16 within 60 days after the date of circulation of the panel report to WTO Members, the report is adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal, or the DSB decides by consensus not to adopt the report. To provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after they have been circulated

Table 1: Process and duration of a dispute.

Duration	Stages of a dispute
60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

Source WTO, 2019

The time it takes to resolve a dispute is an important aspect of the success of the dispute settlement system. "Justice deferred is justice denied," is a widely known moral maxim. Particularly in a model that compensates for past injuries, that is so. Accordingly, DSU Article 4.7 grants 60 days for the consultation procedure, after which the complaining party may request the establishment of a panel. The composition and creation of the panel must be completed within a maximum of 45 days. DSU Article 12.8 states that the time from the date of the panel's formation to the date of its final report shall, as a general rule, not extend six months. In cases of urgency, particularly those relating to perishable goods, the purpose of the panel shall be to release its report within three months. DSU Article 12.9 specifies that, if the panel is unable to meet such time limits, it may prolong the time needed. However, the clause stipulates that 'in no case may the

time from the formation of the tribunal to the dissemination of the report to the Members extend nine months. For the consideration of the appeal, the DSU stipulates that it will usually be completed within 60 days and that in no case should the proceedings extend 90 days. If we add all these phases, we shall have a cumulative span of about 12 months from consultations to the implementation of standard panel procedures, and at most 15 months if the panel extends the time. If the panel 's decision is appealed, we shall have a limited term of 15-16 months or 18-19 months if the panel has prolonged the time.

2.2. Treatment of developing nations under DSM

In the existing DSM there have been several special provisions for developing countries (Kufour, 1997). Developing countries within the WTO have lobbied for special rules and a more equitable way of treating them. The WTO DSM is a rule-based system which guarantees that the judgment depends not on the economic strength, but on the validity of the arguments, of the parties concerned. Nonetheless, experience in the practical WTO legislation as well as in the procedural aspects of the DSM is required to successfully support an argument, sometimes missing when developing nations put or defend themselves before a panel. This has been a disadvantage to developing nations given that most have inadequate legal and power capacities to back their argument (Kufour, 1997).

The DSU recognises the special situation of developing and least-developed country Members. There are several DSU provisions that provide for special and differential treatment for developing country Members in the consultation and panel processes. Special rules for developing country Members in respect of consultations and the panel process are found in Articles 3.12, 4.10, 8.10, 12.10 and 12.11 of the DSU. Article 24 of the DSU provides for further special rules for the least developed among the developing country members. (UNTAD, 2003)

Article 3.12 of the DSU allows a developing country Member that brings a complaint against a developed country Member to invoke the provisions of the Decision of 5 April 1966 of the GATT Contracting Parties which states that "the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party" (Bossche, 2003).

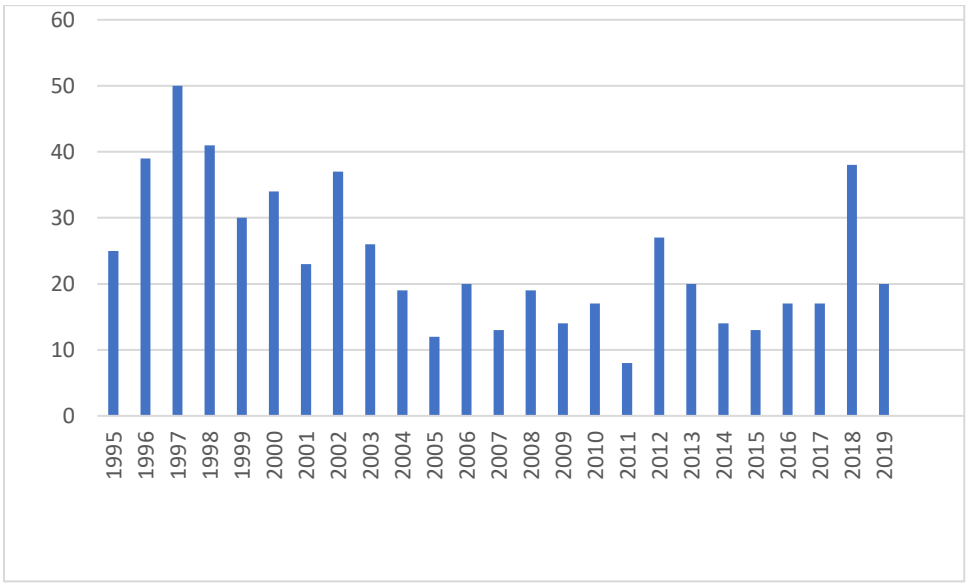
Regarding the panel process, Article 12.10 of the DSU provides that in a dispute concerning a measure of a developing country Member, the panel shall accord enough time for a developing country Member to prepare and present its arguments. Article 24.1 of the DSM provides that special consideration must be given to the special situation of the least developed countries at all stages of the DSM and, therefore, also during the consultation and panel process. WTO members are expected to show due restraint when launching conflict resolution proceedings against the least developed countries (Bossche and Marceau, 1998).

2.3 Disputes under the WTO

Figure 1 presents the number of requests for consultations. There was an average of almost 38 cases per year during 1995-1999, a high number of cases, but the number of

requests gradually reduced after that, settling at around 19 cases per year, on average, during 2007-2016. The reason for the trend is likely to be the fact that many potential cases were placed "on hold" in the last years of the GATT in anticipation of the new DSM resulting from the conclusion of the UR. It had become clear that a more efficient DSM would be implemented under the WTO than that existing under the GATT (Reich, 2017). In figure 1, the annual request for consultation is presented. The rise in 2018 has being speculated to be the effect of the trade war between Washington and Beijing.

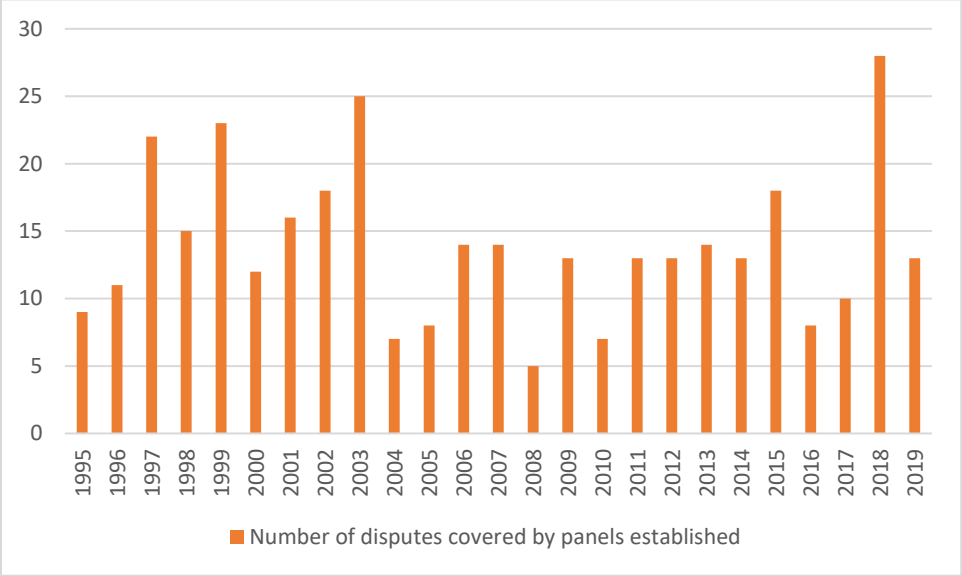
Figure 1: Requests for consultations at the WTO.



Source: WTO, 2019a

If the parties are unable to find a mutually acceptable settlement by consultation, the protesting party may recommend the establishment of a panel to discuss the issue. As of 31 December 2019, a panel was formed for 346 disputes. This amounts to almost 60% of all requests for consultations. Figure 2 show the number of disputes on an annual basis that resulted in the formation of a panel. The number of panels is closely correlated with the number of consultations. Developing countries, however, accounts for only a third of the cases that make to the establishment of a panel.

Figure 2: Request for establishment of Panels.

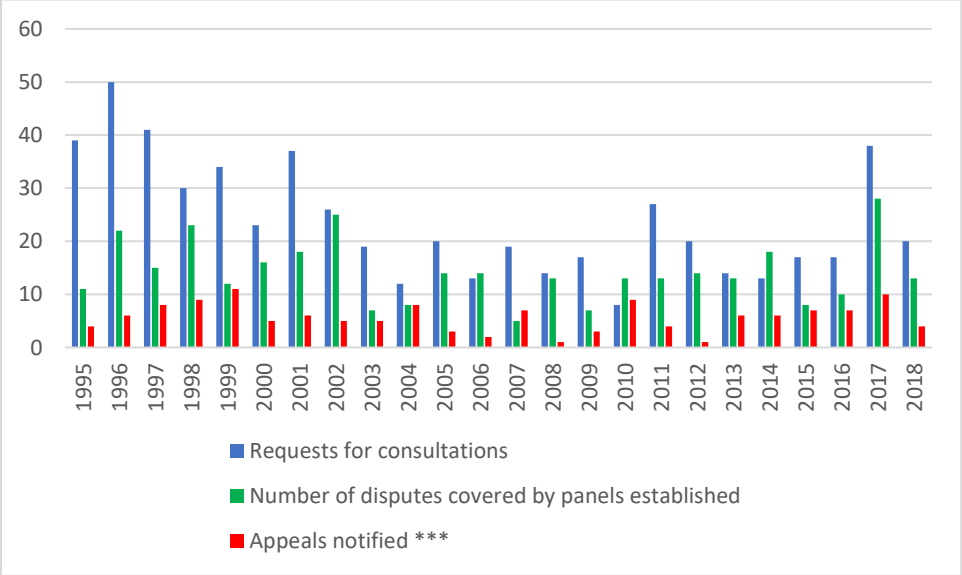


Source: WTO, 2020b

The establishment of a panel occurred in 260 disputes. However not all situations in which a panel is appointed result in a panel report, because the parties may settle their disagreement only after a panel has been formed. Within the time frame, 137 disputes led to an appeal after the panel's report which indicates 67% of all panel reports have and an appeal initiated against it after it was published.

Figure 3 indicates the number of cases filed at the WTO and the appeals to the panel and the AB on an annual basis from 1995 to 2019. This figure shows a positive relation between panel establishment and appeals which shows the disputes the leads to panel establishment are mostly likely possible to end in an appeal.

Figure 3:Requests for consultations, panels established, and appeals notified, 1995-2018.



Source: WTO2020c,

2.3.1Dispute by territory, classification, and types

Out of the 593 cases from 1995 to 2019, 41% have been against the US and EU alone as respondents, and another 13% were filed against China and India, 7% and 6%, respectively. The US and the EU have filed 17% of the cases against other members. Brazil is the developing nations with the highest number of cases filed, a total of 33 cases making about 5% of all total cases filed. The top five users of the system as complaints or respondents since its inception are the USA, EU, Canada, China and India. In table, the shows the list of the top users of the DSM between 1995 and 2019

Table 2: Top user of the dispute settlement system

Top complainants		Top respondents	
Country	Number of cases	Country	Number of cases
United States	124	United States	155
European Union	102	European Union	85
Canada	40	China	44
Brazil	33	India	37
Japan	26	Canada	*23*
Mexico	25	Argentina	22
India	24	Korea	16
Argentina	21	Australia	16
China	21	Brazil	16
Korea	21	Japan	16
Thailand	14	Mexico	15
Indonesia	11	Indonesia	14
Chile	10	Chile	13
Guatemala	10	Turkey	12
Australia	9	Russia	9
New Zealand	9		
Ukraine	9	Sub total	493/593
Sub total	509/593		

Source: WTO, 2019a

Table 3 provides details on the emerging economies that have been most involved in the dispute settlement process. The 15 biggest emerging countries have, for the most part, enabled the mechanism to protect against action from developed countries from the top five users from developing countries, bringing about three-quarters of the cases

against developed countries, mainly the United States and, to a lesser degree, the European Union. Interestingly, while China has never taken an intervention against a developed nation, both Mexico and Brazil have filed a large number of lawsuits against other developing countries. While these 15 economies have enabled the program to resolve various forms of interventions, nearly 40 per cent of the cases in which they are complainants are anti-dumping and countervailing measures.

Table 3:Top developing country users of the WTO dispute settlement system, 1995-2019.

	As a complainant		As a respondent	
Economy	Against developing countries	Against developing countries	Against developed countries	Against developing countries
Brazil	22	11	12	4
China	21	0	38	6
Korea	20	1	17	1
India	19	5	26	6
Mexico	13	12	10	5
Thailand	10	4	2	2
Indonesia	7	4	10	4
Vietnam	4	1	0	0
Turkey	2	3	4	8
Hong Kong	1	0	0	0
Singapore	1	0	0	0
Malaysia	1	0	0	1
United Arab Emirates	0	2	0	1
Saudi Arabia	0	0	0	2
South Africa	0	0	0	5

Source: WTO, 2019b

As respondents, nearly all of the 15 biggest emerging countries faced cases launched by developed countries, with the top five facing complaints mostly from the US followed the European Union. Russia, China, India, Mexico, South Africa, Brazil, and Indonesia have encountered cases filed by other developed nations. Bown (2009) states that there is a reciprocal pattern of conflicts concerning emerging-market nations. Because they have become bigger exporters and have used the mechanism to protect their market position overseas, many WTO participants, particularly developed countries, have often sought to defend their own market rights in these emerging-market nations. Import controls, anti-dumping and countervailing measures compensate for 42% of all situations in which the 15 biggest emerging economies are complaints. It has been speculated by some scholar that china practice “willingly ignorance” when it comes to

developing countries and do not want to be interfere with their internal development policy to send a signal of how they want to be treated (Trudeau, 1999).

IN table 4, North-North disputes are the highest, totalling 192 cases as compared to North-South disputes which totalled to 141. There are more South-North disputes, 151 cases, and 109 South-South disputes. It should be noted that although the North constitutes less than 25% of all WTO member states (164 members in January 2020), they accounted for 57% of all Requests for Consultations, 56.7% of all Panel Requests, and 58.5% of all Panel Reports. Countries from the South, which constitute about 53% of all WTO member states, account for only 42.7% of all Requests for Consultations, 43.3% of all Panel Requests, and 41.5% of all Panel Reports. Developing country complainants, mostly appeared to target their disputes to address either the US or the EC or some other developing nation. During 1995-2019, almost 58% of developing country disputes were either addressed to the US or the EC, while 40% were aimed at another developing country. Very rarely do the plaintiff developing countries put other developed countries aside from the US or the EC. For the 250 disputes against developing countries launched by WTO members between 1995-2019, 43% were launched by a developing country claimant, fewer than 36% were initiated by the US or the EC.

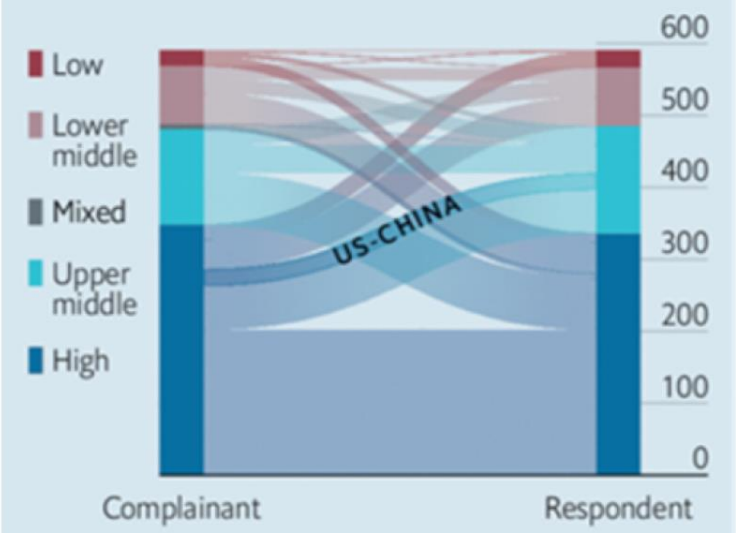
Table 4:Complainant and respondents.

Cased initiated by	Cases initiated against	
	North	South
North	192	141
South	151	109

source: WTO, 2020c

Over 50% of all disputes initiated by developing countries involve the enforcement of market access in agriculture, beverages, or seafood products. This category is also large for developed countries that are major exporters of certain agricultural products, especially the US and Cairns group members (Australia, Canada, and New Zealand), although it represents a smaller share of their overall dispute-initiation caseload. Other sectors of importance for disputes involving developing countries include apparel and textiles, steel, and other manufacturing. As expected, most disputes in R&D-intensive or intellectual property (IP)-intensive sectors – e.g. pharmaceuticals, information technology, telecommunications, and media – have been initiated by developed countries. Developed countries have also been initiators of disputes involving capital-intensive industries such as autos, aircraft, and shipbuilding. Figure 4 gives an overview of disputes by various income category. The biggest share of disputes appears among developed countries and between the higher income categories.

Figure 4: WTO disputes by income gap.

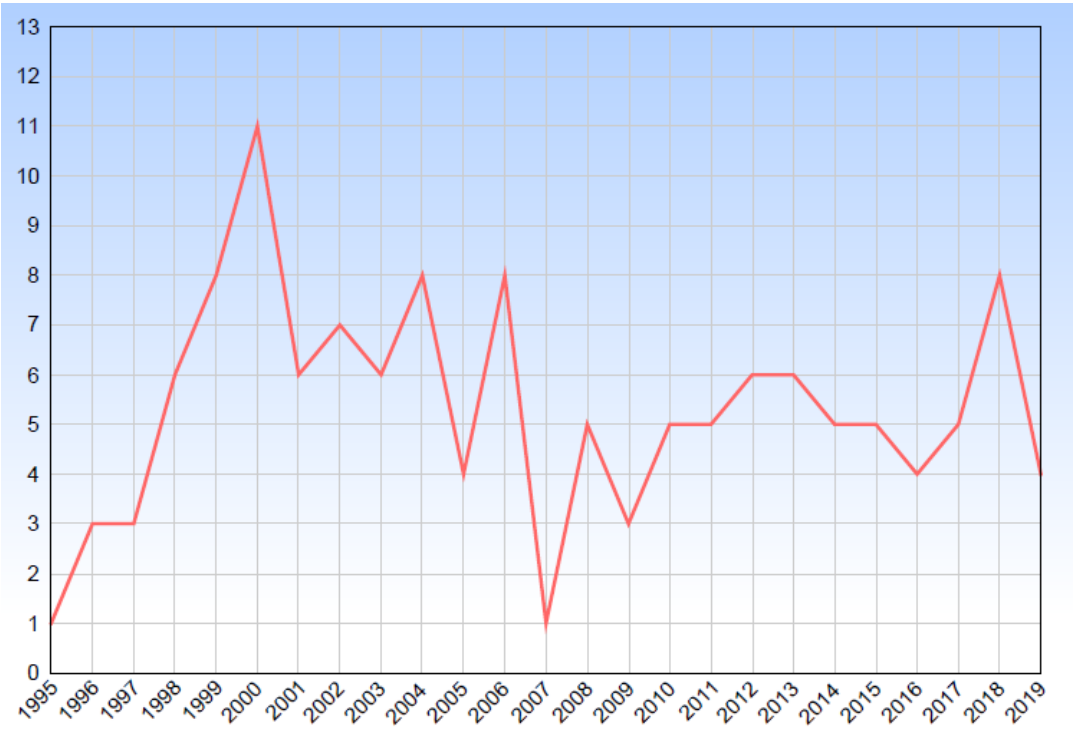


Source: *Economist*, 2019

2.3.2 Disputes involving Dumping and anti-dumping (AD)

Dumping occurs when a foreign producer (exporter) sells its good at a lower price abroad as compare to at home. An anti-dumping duty is the measures the importer puts in place to neutralized effect of dumping. According to the report submitted by the DSM anti-dumping committee (WTO, 2020) there have been 3887 anti-dumping initiations reported by Member states and 133 requests for consultation which account for approximately 23% of the total request for consultations. Among the anti-dumping cases that have been widely discussed subject in both the Academia and among trade practitioners, 12%of the cases are related to steel, and 9% cases to agricultural products. Figure 5 shows a graphical representation of the yearly request for consultation regarding dumping.

Figure 5: Request for consultation on dumping and anti-dumping related cases(1995-2019).



Source: WTO, 2020d

In table 5 the breakdown of cases related to dumping and anti- dumping into the various countries and income categorizes. The US have had 56 cases out of the 133 cases against them but have request consultation only 8 time with 7 of them against developing countries. Note should be taking that members can either filled a complain to the DSM on an unfair anti-dumping duty placed on them by another member or complained that a trading practices by another member is regarded as dumping. developing countries on the hand have request consultation 65 time with 30 cases (almost 50%) against other developing countries is not very surprising given that these countries are trying to capture the international markets to selling their goods and 22 cases against the US.

Table 5:Countries involved in dumping and anti-dumping disputes at the WTO, 1995-2019.

Countries filing a claim	US	EU	China	India	All EMDEs and LDCs	All DCs	Total
US	0	0	3	0	4	1	8
EU	10	0	3	1	4	0	18
China	6	3	0	0	0	0	9
India	3	4	0	0	2	0	9
EMDEsand LDCs	22	7	0	3	30	3	65
DC	15	1	2	0	2	3	23
Total	56	15	8	4	43	7	133

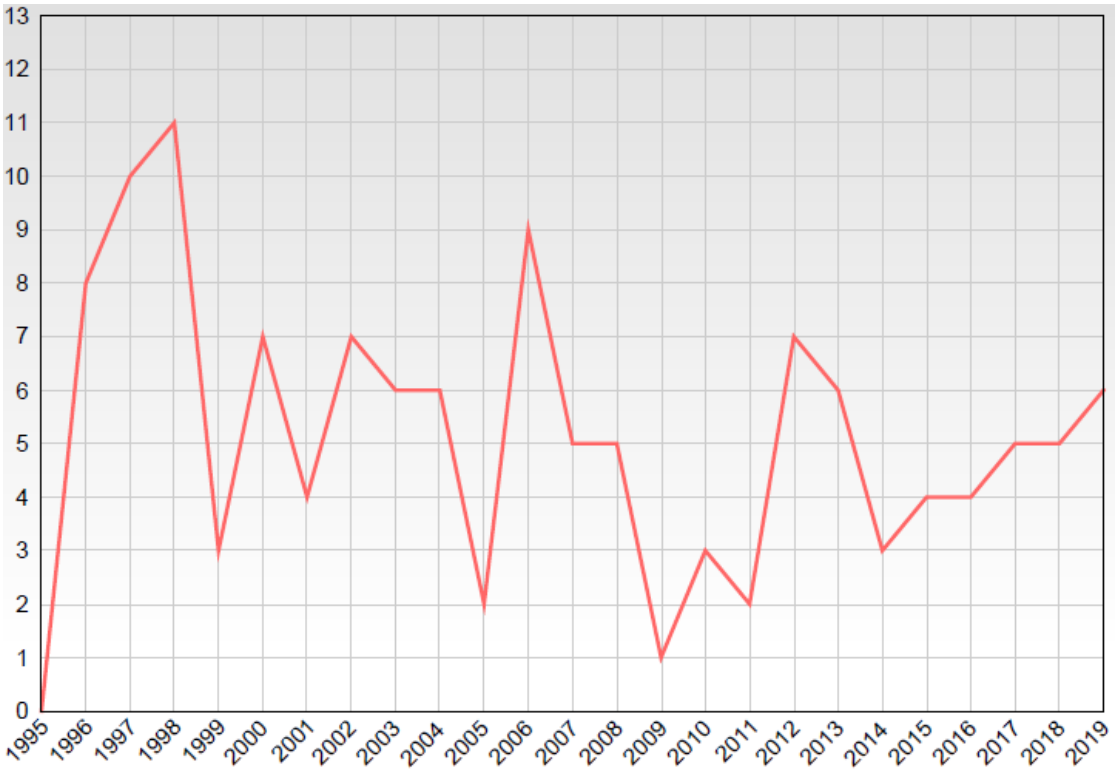
Sources WTO, 2020e

Note: EMDEs refer to emerging market and developing economies, LDCs are less developed countries and DC are developed countries.

2.3.3 Disputes involving subsidies and countervailing measures (CVM)

A subsidy is a transfer by the government to a firm or producer or individual that results in a benefit. Countervailing measures are measures used to deal with an unfair subsidy. They may take the form of duties or undertakings by the exporting firms or by the authorities of the importing country affected by the subsidy. Figure 6 shows the annual distributions of request for consultation of disputes involving subsides and countervailing measures between 1995 and 2019. there have been 130 request or consultation on issues involving subsides, about 8% had to do with issues involving commercial aircraft and vessels while 27% of the cases where automobile industry related. Out the 129 cases the US is the top complaint and response 18% and 33% respectively, while developing countries account for 20% as respondents and 26% as complaint.

Figure 6: Disputes involving subsidies and countervailing measures (1995-2019) (CVM)



Source: WTO,2020e

Table6 gives the country breakdown of these cases Involving subsides and CVM. The US being the top user here have filed 32 cases with 17 of them against developing countries whiles 43 cases have been filled against the us with 19 coming from developing countries. in total developing countries have filled 33 with 25 again developed countries and a total of 26 cases filed against them with 22 from developed countries.

Table 6:Countries involved in CVM disputes at the WTO, 1995-2019

Countries filing a claim	US	EU	China	All EMDEs and LDCs	All DCs	Total
US	0	10	10	7	5	32
EU	10	0	1	10	5	26
China	5	1	0	0	0	6
EMDEs/LDC	14	5	4	4	6	33
DC	14	2	1	5	10	32
Total	43	18	16	26	27	129

Source: WTO, 2020f

Note: EMDES are emerging market and developing economies, LDC are less developed countries and DC are developed countries

2.3.4 Disputes involving safeguards

As a majority of the developing countries did not commit to tariff, offering "ceiling bindings" instead, very few of them have access to this provision. This some trade exporters says is a big problem given the structure of most developing countries. WTO Special Safeguard (SSG) is a provision in the Agreement on Agriculture permitting some members to temporarily apply additional duties on imports of agricultural products in response to import surges or price falls as specified in the Agreement. The safeguard may be invoked by a member only for those products that had been subject to tariffication and for which the right to use the SSG is inscribed in its schedule of commitments. SSG give permission for some developed nations to invoke safeguard measures regardless of country type to protect them against a flood of imports or a decrease in domestic price this are seen as unfair measures which negatively affects developing countries that depend on agricultural exports as a massive share of GDP and could end up in disputes . However the SSG was the creation of the AoA to address concerns that removing non-tariff measures might result in either a flood of imports that would hurt domestic production or depress domestic prices because duties bound through the tariffication process alone might not be sufficient (WTO,2019).

Countries wishing to permanently raise their bindings could do so under Article XXVIII. The GATT of 1994 provides for the use of safeguards under the WTO Agreement on Safeguards (Crowley, 2007 Safeguards are limited interventions that are subject to a strict time period of four years. Protection can be expanded to eight years under extraordinary circumstances. Importantly, after a safeguard has been in effect for three years, the exporting partners involved can retaliate against the safeguard by removing significantly equal tariff concessions. As a result, safeguards-imposing countries have an incentive to comply with time limits. Safeguard actions are much less used compared with to AD and CVD actions due to its legal simplicity and text.. Most of these requests have been made by developing nations as a majority of them are agro-based economies.

Safeguards are contingency restrictions on imports taken temporarily to deal with special circumstances, such as a surge in imports while the Special safeguard (SSG)can only be used on products that were "tariffied". Further, they can only be used if the government reserved the right to do so The SSG provision has been reserved by 36 WTO Members, and a combined total of 6,156 special safeguards on agricultural products as displayed in table 7.

Table 7: list of the 36 countries with SSG and how many reserved rights:

Australia (10)	Indonesia (13)	Poland (144)
Barbados (37)	Israel (41)	Romania (175)
Botswana (161)	Japan (121)	Slovak Republic (114)
Bulgaria (21)	Korea (111)	South Africa (166)
Canada (150)	Malaysia (72)	Swaziland (166)
Colombia (56)	Mexico (293)	Switzerland-Liechtenstein (961)
Costa Rica (87)	Morocco (374)	Chinese Taipei (84)
Czech Republic (236)	Namibia (166)	Thailand (52)
Ecuador (7)	New Zealand (4)	Tunisia (32)
El Salvador (84)	Nicaragua (21)	United States (189)
EU (539)	Norway (581)	Uruguay (2)
Guatemala (107)	Panama (6)	Venezuela (76)
Hungary (117)	Philippines (118)	
Iceland (462)		

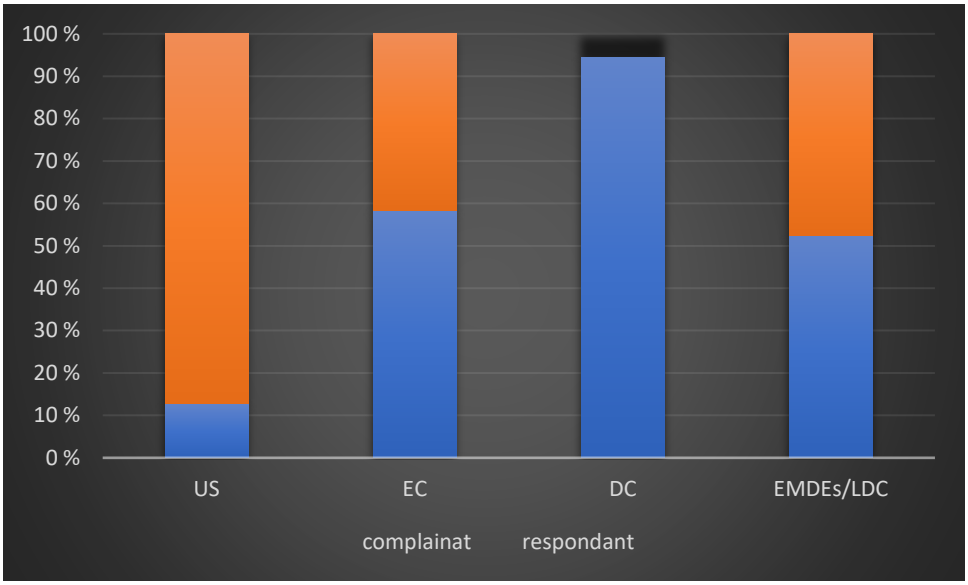
Sources: WTO, 2019

The list shows the some developed countries who negotiated for these special rights had just a small percent of their GDP based on agriculture and yet negotiated huge special like in the case of Norway this some scholars have speculated is not fair compared to developing countries which sometimes have as high as about 65% of their GDP based on agriculture. it all goes down to the legal capacities of their as developed with huge legal capacities were able to negotiate special safeguards (Bown, 2019).

The contingency measure is the imposition of a duty if the rise in goods triggers a loss of welfare for vulnerable domestic farmers. The nature and application of the SSG is a subject of dispute within the WTO.

A WTO member may take a "safeguard" action (i.e., restrict imports of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing, or which is threatening to cause, serious injury to the industry. There have been 61 cases of requests for consultations i.e. 10% of total request made. Figure 7 below shows the disputes in respect to the use of various countries and classification. About 30% of all cases were about issues involving importation (import taxes, import ban, market access, import licencing) and 17% on issues involving subsides (import and export subsidies, production subsides).

Figure 7: Request for consultation on safeguard by countries and territories 1995-2019.



Source: WTO, 2020g

2.3.5 Summary over the disputes

In a snapshot since the inception of the DSM and December 2019 there have been a total of 593 request for consultations out of which 349 had led to the establishment of a panel, 260 panel reports have been released and 195 of these reports have been adopted whiles,137 have been appealed. The United States has been the biggest user of the system, leading with 124 cases as a the compliant and 155 as the respondent. With regards to developing nations, Brazil is the biggest user with 33 complains and China the biggest respondent with 44 cases against it. The top five users of the system as complainant or respondents since its inception are the USA, EU, Canada, China, and India. Anti-dumping accounted for 21% however safeguards and countervailing measures, accounts for 10%, and 21%, respectively of the total number of cases. Approximately 37% of the total disputes have to do with issues involving agriculture either goods or product and steel accounted for about 12%. Over 50% of all WTO disputes initiated over steel products took place in just two years – 2000 and 2002, the same period some developing countries tried to join the production of aircraft or produces steel with is a major component in aircraft production. The 2002 cluster of steel disputes came in response to the US imposition of import safeguards in 2002. In the case of agriculture, the UR Agreement on Agriculture(AoA) contained a negotiated 'Peace Clause' (Steinberg and Josling, 2003) designed to limit formal dispute-settlement activity in the sector –provided certain economic conditions were met – until the end of 2003. Yet there is no evidence of a sharp increase in disputes over agriculture from 2004 following expiration of the Peace Clause. Just under half of the all cases, 45%, involved disputes in the agricultural sector whiles,10% of the cases are about steel and steel products and 6 % in services delivery. One might this case were used to prevent some countries from participating in the sector.

Section 3: Related Trade Theories and Literature Review

This section looks at theory related to trade dispute topics and examines the existing literature available on the use of the DSM at the WTO.

3.1 Economics behind trade disputes

WTO agreements and rules are generally based on theoretical economic foundations. The WTO attempts to strike a balance between a government's right to implement policy that serves to improve the nation's welfare and the need to constrain a government from using policy intended to distort trade, exports, or imports. Thus, a big part of a panel's job is to identify the objectives of a policy and assess whether the policy as implemented is intended to affect trade or serve to address some other social policy issue while ensuring that there is minimal repercussions to trade. The theoretical discussion of the disputes is limited to dumping/anti-dumping, subsidies and countervailing measures, and safeguards. Because these are those are most frequently feature in WTO dispute cases. Dumping and anti-dumping alone accounts for about 27% of the total, countervailing measure accounted for 26% of the total requests for consultation and disputes involving safeguard measures accounted for 12% In most of these cases developing nations were either the complainant, respondent or were involved as a third party. About 42% of the total cases at the WTO involve developing nations, but 68% of the disputes involving developing countries revolved around issues pertaining to AD, CVM, and SG.

3.1.1 Dumping and Anti-Dumping

One of the basic principles of the WTO rules is non-discrimination. In an international context, dumping is international discrimination. Viner (1923), defines dumping as a situation in which an exporter sells a portion of its manufactured goods on a foreign market at a low price and the remaining inventory at a higher price on the domestic market. Haberler (1936) describes dumping as exporting products overseas at a price below the sales price of the same products at home, at the same production cost. Thus, dumping either involves selling abroad at a price less than the sales price in the home market, or selling at a price less than what it costs to produce. Dumping exists if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the product when destined for consumption in the exporting country (Jepma and Rhoen, 2002). This means that dumping is said to exist when the product exported to an import country is low priced compared to the price of the same product produced locally for consumption.

There are purportedly several motivations for dumping, but the main aims of dumping are to: (a) dispose of over-stock generated by mistake due to inaccurate assessment of demand; (b) establish new trading ties through selling initially at cheap rates or prices (c) drive rivals out of the international market, whether foreign or domestic, by undercutting their price; (d) derive advantages from economies of scale in production; or (e) to take account of the differences in the price elasticity of demand (Janardhan, 2017).

There are three basic types of dumping based on the time variant of the practices that can be directly linked to the motivations that led to the practice. Sporadic dumping is when, from time to time, manufacturers sell at below cost or the home market price to get rid of surplus stock. The supplier of unsold inventories does not intend to launch a trade war on the home market to preserve its profitable role. The surplus production might be discarded in a foreign market where the commodity is not usually available. As a consequence, sporadic dumping is meant to liquidate surplus supplies which might sometimes occur. while, sporadic dumping is periodic, predatory dumping is permanent. Predatory dumping is often referred to as intermittent dumping when its main purpose is eliminating competition in a foreign market. It includes the selling of products in international markets at a price lower than the home market average. It is marketed at a loss to increase exposure to the consumer and to reduce rivalry. If rivals are driven from the market, the firm creates a monopoly. The monopoly status is then used to increase the price and seek profits. In either event, there is a downside that former rivals can enter the business due to high profit margins. Persistent dumping, as the name itself suggests, is the most enduring form of dumping. It requires steady pricing at cheaper rates in foreign markets than in the domestic market that goes on indefinitely. This approach is focused on the assumption that industries vary in terms of operating costs and demand characteristics. In the case of persistent dumping, the firm can implement marginal cost pricing abroad while using maximum cost pricing on the domestic market. Reverse dumping occurs in overseas markets with relatively less elastic competitive market structures. This is when the foreign price is higher than in the home market. Foreign markets are more cost tolerant and has a lower cost in the home market of the producer (Bentley & Silberston, 2007).

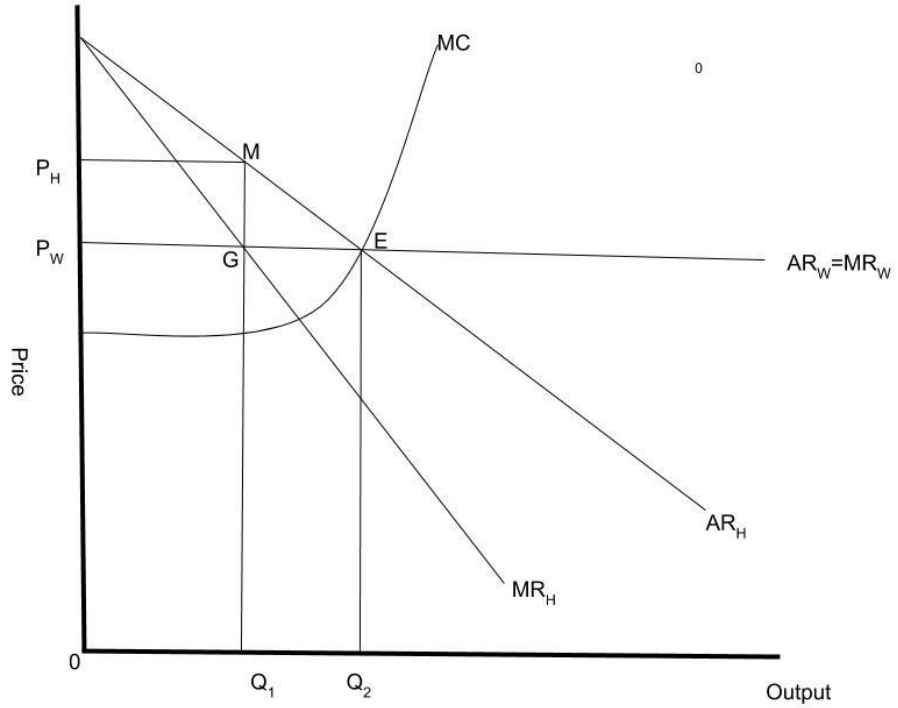
Dumping, as defined in Article 2.1 of the WTO Anti-dumping Agreement (1994), has a narrow, technical meaning which is in sharp contrast with the popular notion of dumping (WTO, 2000). According to Article 2.1 of WTO (1994), a product is considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. The concept alluded to above may include two major notions of dumping: (i) international price discrimination and (ii) cost dumping. Cost dumping is paying two or more specific costs for a similar commodity in two or more distinct markets typically needs the following conditions: market segmentation, dominant business share in the home market for a firm that dumps a like commodity and a higher price elasticity of demand in the export market for the commodity in reference (Willig 1997). Predatory dumping which occurs when a foreign organization charges high prices and earns profits in its own country and uses these profits to sell the products at lower prices to build market share in other countries. This will be an “unfair” practice but the legality to explain this is not an easy job.

To explain the economics of dumping, it is first important to differentiate between various meanings of cost. The most significant difference is between average and marginal costs. The average cost, also referred to as the completely distributed amount,

comprises all expenses borne by the business, separated by the number of units it generates. Marginal costs calculate just the expense of extra manufacturing units. The differentiation is particularly relevant in the near run, as certain input elements are constant and are part of the cost rises and decreases as production differs.

In Figure 8 below, AR_H is the average revenue in the home market (and the demand curve for the good in the home market), MR_H is the marginal revenue curve in home market, AR_W is the average revenue in the world market, MR_W is the marginal revenue in the world market, P_H is the price in home market (monopoly price), and P_W is the price on the world market (competitive price). A market is said to be competitive if there several buyers and several sellers where sellers are price takers not setters with no entry barrier to new sellers of the product in question while in a monopoly there is one seller and several sellers and this sellers have the power to set price to enjoy supernormal profits. It is assumed that the firms operate in two markets that is domestic market (home market) and foreign market (world market) faced by a firm.

Figure 8: Equilibrium under Dumping



Source: *economicsdiscussion.net(2019)*

In domestic market, the firm enjoys a monopoly status, whereas in foreign market, the firm competes against foreign firms in a perfectly competitive market. The monopolist is in equilibrium when profits are maximum, that is, when MR=MC. Equilibrium is achieved at point E, with quantity supplied as OQ_2, of which OQ_1 is sold in home market at a price of PH and Q1Q2 is sold at the world market price, PW. The price charged in

world market is lower than the price charged in the home market which fits the definition of dumping. (economicsdiscussion.net, 2019)

Economic theories of dumping have paralleled these developments. The standard view of dumping was that of Viner (1923), who used a description that is similar to foreign market discrimination. Using that perspective, economists have developed what has become the hypothesis of policymakers ever since: that in the absence of "predation" dumping is fundamentally harmless to the importing nation. More recently, a variety of authors have experimented with the alternate concept of dumping as lower-cost prices. Where firms use different forms of production to save cost of production for good abroad than home. No agreement has yet been established as to why this activity exists, if it does, and so there is therefore no strong consensus as to what the welfare consequences of selling below cost might be. Deardorff (1989) and Davies and McGuiness (1986) provided three economic explanations for dumping below marginal cost. The first of these rests on uncertainty about export markets and the need for producers to make decisions about production before prices are known. In these circumstances, producers naturally decide output based on an expected price, not the unknown actual price. There must therefore be occasions that arise in which the price turns out to be lower than expected. If price turns out to be sufficiently low, than the producer would not have chosen to produce had he known the low price in advance. This does suggest sales at a price below the firm's ex ante marginal cost. For a given level of production, profits are indeed higher when MC<P than when MC=P, as one would expect from an increase in the price holding everything else constant. If the loss from holding inventories is higher than the loss from selling at blow cost, then it a "normal business practice." (Deardorff ,1989)

One of the most common impediments to commerce has been anti-dumping (AD) over the last 25 years. While certain other trade security mechanisms such as tariffs, limits and reciprocal limitations on products, etc, have come under stronger GATT / WTO regulation, AD interventions have expanded. There were more AD grievances filed by GATT/WTO members than for any other trade laws combined after 1980. More AD duties were imposed globally in 1990, 165 cases in total, than were imposed during 1947-1970 (Blonigen and Prusu, 2001).

Anti-dumping policy occupies a dubious niche within the trade policy literature. Not only is it seen as a policy to counter a rarely observed phenomena – and therefore have only the thinnest of possible efficiency rationales – but when they are applied, anti-dumping duties are seen as gratuitous in size – with duties of the order of 100% not being unusual (Bown 2007). That is, an AD duty of 100% is an allegation that foreign firms are selling at prices less than 50% of the cost or below the price sold in the home market.

Although the anti-dumping mechanism was created for the purpose of avoiding unfair trade, preventing the big businesses from monopolizing the market, some authors defend that it is only a new way of protectionism (Nelson, 2004; Davis, 2009) that could be used for political ends (Feinberg, 1989, 2005; Araújo et al., 2001; Aggarwal, 2004;

Knetter and Prusa, 2003; Niels and Francois, 2006; Vasconcelos and Firme, 2011). Theuringer and Weiss (2001) also suggest that anti-dumping could benefit the big businesses' interests to the detriment of the interests of small firms from developing countries with reduced level of competitiveness.

Despite the controversy regarding the AD use as an instrument of protection, there is an application that goes beyond these two currents of economic thought. Theuringer and Weiss (2001) raised the hypothesis that the AD mechanism could be used not only to favour the less competitive companies, but also those that already have a high level of competitiveness. Thus, the AD instrument could cause an opposite effect to that one expected by its policymakers. In other words, rather than inhibiting the unfair trade by protecting the less competitive companies, it would be acting as an entry barrier against new competitors, and consequently, it would be contributing to the strengthening of the already consolidated companies. Firme and Vasconcelos (2012) also point out this possibility for AD instrument use. For them this mechanism could be used to inhibit the entry of new competitors in any specific market. Peng et al. (2008) argue that research related to entry barriers have concentrated efforts on economic variables such as economies of scale and product differentiation. Therefore, papers based on institutional variables that consider trade barriers, such as the AD laws, as an entry barrier are rare. This brings into quest whether AD laws are being used by big companies in developed countries and an entry barrier to keep their monopolist power. In those markets though studies to the fact of are rare which does not necessary mean that unfair practices do not occur.

In the short term, all things being equal, dumping firms appear to achieve lower unit costs than similar firms in markets where dumping exists as dumpers can operate their plants at higher capacity usage rates— a reason that also has a much greater cost influence than any other variable. Industries on the domestic markets who have been dumped on cannot respond in kind when the business is shut down This may well translate to lower operating costs than a state-facility operated at of 50% of capacity in an idle 100% factory (Bown, 2007).

In the longer term, dumping discourages investment in markets where dumping takes place and, at the same period, promotes higher rates of investment in the safe markets from which dumping takes place. That is because investment costs are higher and returns lower in the markets where dumping takes place and the costs are lower and returns higher in the safe economy from which dumping takes place. Thus, the short-term cost benefit gained by dumping companies gradually transforms into financial and technology gain when demand dries up in one sector and intensifies in the other. (Bown, 2017). Although the importing nation may benefit from sustained dumping by enhancing their purchasing power and trading conditions, most governments view all types of dumping by international suppliers unfavourably. Thus, most countries have anti-dumping laws, typically requiring a disciplinary or punitive anti-obligation.

One of the most difficult issues in AD cases is the requirement to establish a causal link between dumping and injury. In most cases, there are a range of factors which contribute

to the performance of the domestic industry and may play a role in causing injury. For example, adverse currency movements, recession, and changes in consumption patterns. It is difficult, therefore, to define exactly what constitutes "establishing a causal link" in practice and how, in practice, to take account of factors other than dumping which may be contributing to the injury. Another problem is that in many cases, an increase in imports from the country accused of dumping may coincide with injury to the domestic industry yet may not be the cause of that injury. Indeed, the causation may run the other way (Raju, 2008).

3.1.2 Subsides and Countervailing measures

According to the WTO (2019c) subsidies shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a Member. This when a government's program involves a direct transfer of funds (e.g., grants, loans and equity infusion); the potential direct transfers of funds or liabilities (e.g., loan guarantees); government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits); or provision of goods or services other than general infrastructure, or purchases goods, or making payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (ii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or there is any form of income or price support in the sense of Article XVI of the GATT 1994; and (b) a benefit is thereby conferred.(WTO, 2019).

The SCM Agreement describes subsidies and expands the definition to subsidies that are prohibited. It does not oppose government subsidies but stipulates a tighter concept of subsidy in the SCM Agreement (Skeen, 2000). It provides a stricter concept of subsidy in the SCM Agreement and provides an Appendix detailing export subsidy, and specifically involves export-oriented tax benefits. Not all subsidies breach but provide for "exceptions" for "green light" or not-actionable subsidies (Skeen, 2000).

Swan and Murphy (1999) reported that the 1995 WTO Subsidy Agreement was the product of several years of difficult negotiations during the UR. The WTO Subsidies Agreement is a significant one, because it includes a broad concept of "subsidy". As opposed to the 1979 GATT Subsidies Legislation this was binding on all WTO members. The WTO agreements also specifically differentiated between industrial subsidies and agricultural subsidies. The SCM Agreement applies not only to industrial products, but to agricultural products as well. Thus, subsidies disciplines and countervailing measures can be invoked in respect of agricultural products. That said, the Agreement on Agriculture (AoA) modulates some of the multilateral disciplines of the SCM Agreement in respect of those products. Except on matters of subsidy on agricultural products where the SCM Agreement is not applicable, however in relation to agricultural products it is AoA Agreement which is used . The vast bulk of world trade in primary goods is subjected to agricultural subsidies. Part of the problem lies in the fact that agricultural products are expressly excluded from most of the coverage of the WTO Subsidies Agreement. The exclusion of agriculture was necessitated by the advent of the WTO Agreement on Agriculture that regulates national export

subsidies in a fashion unsuited for treatment under the broader SCM Agreement. (Swan and Murphy,1999). Although the SCM prohibits export subsidies, it also exempts 49 countries designated as least developed countries by the United Nation and 34 WTO Member countries are granted exemption on export subsidies

Government subsidies can have far-reaching consequences. If a government subsidizes projects, such as advanced technology development projects, the rewards that reach far outside the sector specifically involved. That is valid since the outcomes of the programs are distributed through a broad variety of areas. Policy funding for research initiatives will lead not only to domestic economic growth, but to the advancement of the global economy. (WTO, 2019c)

Subsidies may often be used to promote less productive businesses to minimize surplus capacity or to exit from unprofitable sectors. They can then pave the way for systemic change and changes in jobs. These incentives also promote the correct distribution of capital and facilitate the importation of profitable products. (Kjellingbro & Skotte, 2005)

Subsidies will even hinder trade if used, regardless of its profitability, to support a domestic industry. These subsidies will put a domestic product in a better competitive position in the short term. They will sustain or increase product productivity and retain stable jobs in this field. The drawbacks of subsidies are nevertheless evident in the long term. It inhibits productivity benefits from highly competitive markets and undermines attempts for rationalization by businesses (Baylis, 2005).

Subsidies that are utilized as part of a "beggar-thy-neighbour" strategy(policies that a country enacts to address its economic woes that, in turn, actually worsens the economic problems of other countries) will eventually contribute to retaliatory subsidies, contributing to "subsidy wars". Subsidy measures would therefore be criticized not only for stopping the commodity from reaching its proper competitive role, but for needlessly destroying the treasuries of the countries concerned. The consequence is a bigger pressure on taxpayers. Consequently, these measures do not in any way boost the economic well-being of those involved (WTO 2016).

The economic issue with subsidies is that there are “good” and “bad” subsidies. Subsidies are the right of a government to apply fiscal policy (taxation and spending). The WTO must ensure that a government maintains its sovereignty over its right to regulate, but that it limits abuses in the use of a subsidy that distorts trade.

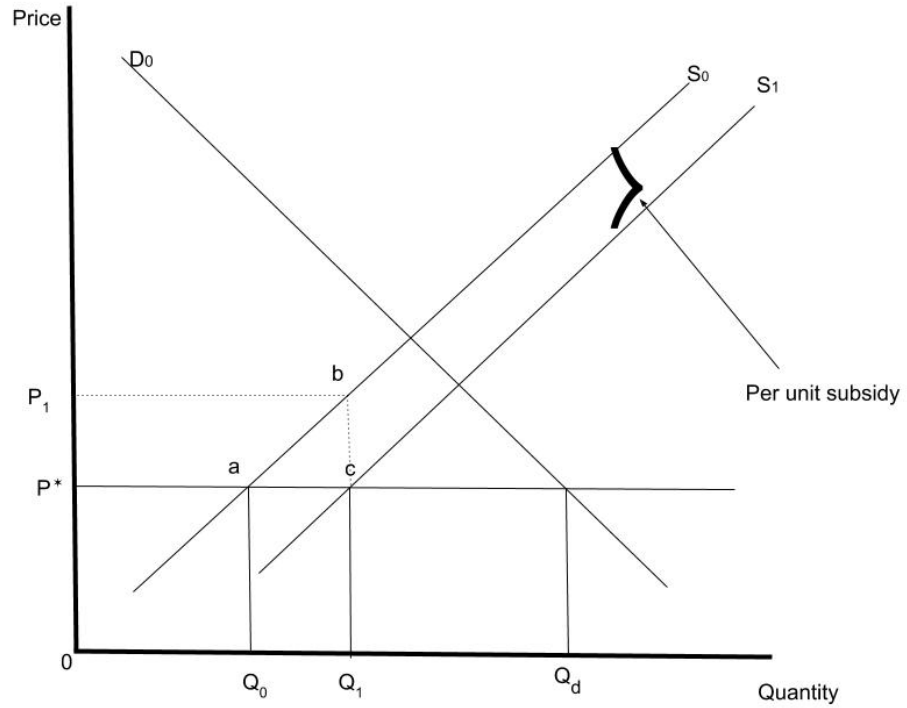
For a subsidy to qualify as a “green light” type, a subsidy must not distort trade, or at most cause minimal distortion. These subsidies must be government-funded (not by charging consumers higher prices) and must not involve price support. These included certain types of research subsidies, subsidies aiding disadvantaged regions, and subsidies promoting the adaptation of existing facilities to environmental requirements while red light subsidies are export and “domestic supply” subsidies: made contingent on export performance or on the use of domestic over imported goods. That is, the subsidy directly affects trade. The SCM flatly states that WTO members “shall neither

grant nor maintain" such subsidies. A member found to be maintaining a subsidy falling into the red light can be required to remove the subsidy. (WTO,2019c).

An important distinction, for example, is whether green subsidies are granted to an import competing industry or to an export competing industry. If the former is not affected and world prices are assumed to be unaffected, the end result will be an increase in domestic output at the expense of imports.

In figure 9, the case of a production subsidy is considered Domestic supply is given by S_0, domestic demand by D_0 and world price of the product is given by P*. Since the world price is below the price that would clear the domestic market, the total quantity demanded of the product would be satisfied by Q_d 0 units of domestic production and imports, equal to Q_0Q_d.

Figure 9: per unit production subsidy



Source: WTO, 2006

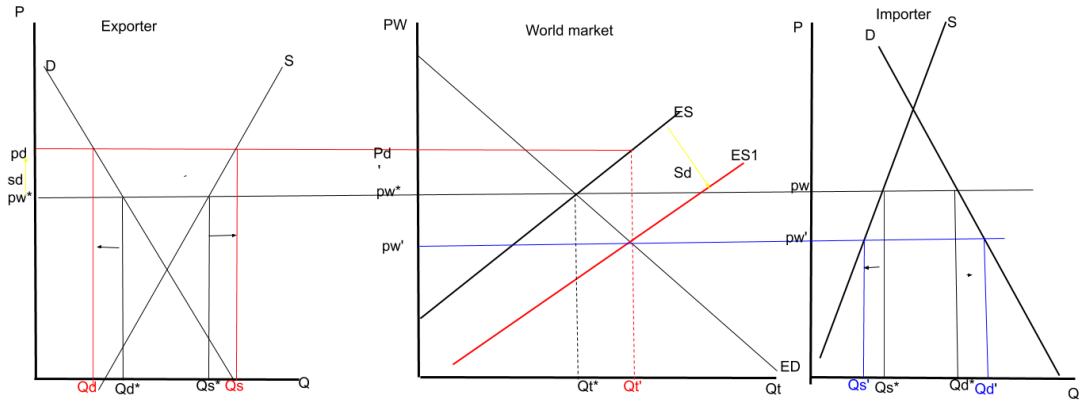
If the government, for political or redistributive reasons, decides that the level of domestic production should be $0Q_1$ instead of $0Q_0$, it has to then decide whether or not to use a tariff or a subsidy to expand production. If it uses a subsidy, and assuming it cannot affect world price, domestic supply will shift from S_0 to S_1 causing domestic production to expand to the desired level and imports to fall by Q_0Q_1.

Prior to the subsidy, domestic output was at point Q_0. Since additional domestic output beyond that level would cost less to source from the world market, the government will have achieved the desired level of output, but the resource implications for the economy

will be negative. The additional cost to the economy is represented by the triangular area abc in the figure.

Consider an export subsidy as in figure 10. The export subsidy on the one side provides a lucrative for producers to supply move for export rather than for domestic consumption. That is the support is provided based on export performance; hence, the incentive is to export rather than to supply more to the domestic market. As more of the good is destined for international markets, the price on the domestic market increases. Around the same period, as access to the global economy as increases international prices fall. A tariff or some other barrier would be necessary to maintain the price differential between the domestic price, P_d, and the world market price, P_W.

Figure 10. Economics of an export subsidy



Source: Garcia, 2019

At the initial world price, Pw*, the level of exports from the exporting country is Qt* in the middle panel of figure10. The world market clears because the foreign country (assumed to be the rest of the world) imports the same amount. If an export subsidy (S_d) is provided to producers in the exporting nation, some of their output is diverted to the export market, increasing the price of the good at home (to Pd in the above diagram). The increase in excess supply (from ES to ES1) on the world market, however, lowers the world price in the importing market to Pw′ in the figure 10). The new level of exports is Qt′, which corresponds to the level of imports into the foreign country. The net economic effect of the export subsidies on the home nation is distinctly negative. Domestic buyers pay a premium price for a good that is offered on the international market at a cheaper price. Domestic producers are major beneficiaries of the program because their output has increased (from Q*s to Qs^1) because of the subsidies. Consumers in international countries profit from lower global rates. Nevertheless, international manufacturers are net losers, because they still must deal with lower costs derived from an unfair advantage, driving out efficient firms that are not competitive at the artificially low price.

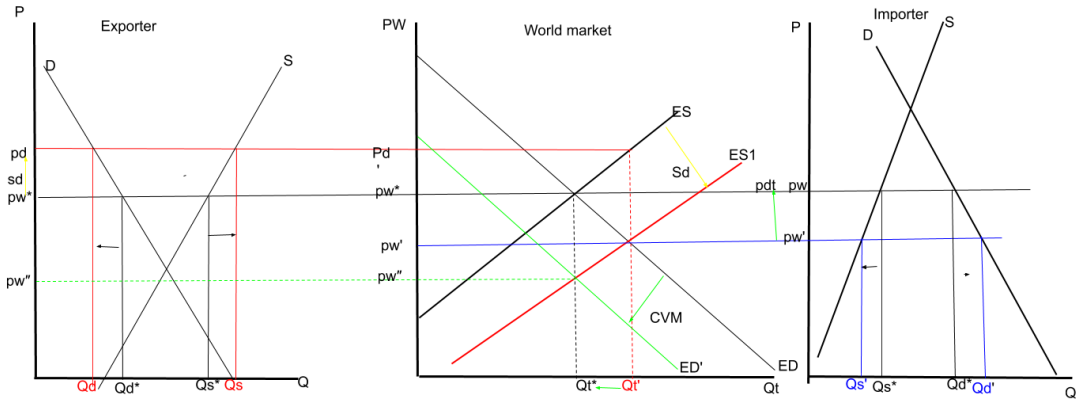
The WTO SMC also governs the action countries take to counter the impact of subsidies from other countries. Under the SCM Agreement, a Member may use the dispute resolution process of the WTO to request the revocation of the grant or the termination of its adverse effects. Alternatively, the Member can conduct its own investigation and eventually impose an additional import duty ('countervailing duty') in the case of subsidized goods which are found to cause harm to the domestic industry.

Countervailing duties may only be applied after an investigation has been initiated and conducted according to procedures specified in the Agreement. Countervailing measures are measures that can be undertaken whenever an investigation, by the investigating authority of the importing country, has led to the determination that the imported goods are benefiting from subsidies, and that they result in an injury to local producers (OECD 2011). Countervailing measures may take the form of countervailing duties or undertakings by the exporting firms or by the authorities of the subsidising country.

At least to some degree the current WTO rules represent a fundamental theory of trade policy on production and export subsidies. This statement can be portrayed in a graphically simplified way as shown in figure 11.

As discussed in the figure 10 the effect of the export subsidies granting export subsidies of rate sd to exporters result in lowering the price of imports from P_W*(world level) to P_W'. In this circumstance producers in the importing country would lobby for protection from unfair, subsidized exports and will initiate countervailing measures or duties of rate t to a value equivalent to the subsidy (sd) to offset price from pw′ to domestic price with tariff (pdt). If the CVM procedure is successful, and in accordance with SCM Agreement rules, the countervailing duty (t), not higher than the unit subsidy, will be imposed on subsidized imports. Thus, the CVM duty will eliminate the subsidy's effect on trade.

Figure 11: Economics of a countervailing measures and export subsidy



Source: Garcia 2019

Countervailing duties should be conducted correctly or not at all. A correctly conducted CVD will restore the equilibrium to that existing prior the implementation of the subsidy. The government of the net exporting nation would essentially be transferring the value of the subsidy to the government of the importing nation(s) applying the CVM as a duty and collecting rents in the form of tax revenue. The argument refers to the principle of justice, that if the CVM can deter unfair (distorting) actions by exporters, it will boost global welfare. Nevertheless, as is the case for many trading instruments, there is a risk for misuse, and others claim that CVM is mostly seen as an indirect way of insulating domestic manufacturers from pressure from foreign markets (Baylis 2005). Countervailing duties may only be applied after an investigation has been initiated and conducted according to procedures specified in the Agreement. Countervailing duties are also subject to a "sunset clause" and a "de minimis clause".Article 21.3 on the agreement of a SCM has a sunset clause stipulates that the countervailing duty ends no later than five years after its imposition unless the authorities determine, in a review initiated on their own initiative or upon a duly substantiated request made by the domestic industry, and the investigating authorities find that injury from the subsidy continues or has the potential to recur .A Article 11.9 has a, de minimis clause that stipulates the termination of an investigation in such cases as where the total ad valorem subsidization of a product is less than 1%(WTO, 2019c).

There has been a decrease in the number of lawsuits brought before panels after the entry into force of the WTO Agreement, it is notable that the banned subsidy conflicts that have reached panels have recently risen. the rise in most cases have been attributed to the developmental programs of developing countries in their effort to alleviate poverty in trying to create employment but they end up in trouble for unfair support to these infant industries.

In a joint proposal submitted to the WTO panel, many developing countries claimed that developed countries are at an advantage due to infrastructure limitations, lack of bargaining power, small policy resources, and lack of administrative ability to manage. "On the other side, it is the developed members who have reaped considerable benefits by finding and gaining autonomy in areas of interest to them; a type of reversed special and differential treatment (S&DT)," (Page, 2002).

Agricultural subsidies are allowed under the Agreement on Agriculture in compliance with relevant commitments made by WTO Member States. CVM's agricultural inquiries included several situations in which countries were believed to have broken their commitments. Agricultural subsidies are the most effective mechanism for accelerating the growth of agricultural sector. It is paid, to the farmers and the agribusinesses to supplement their income, manage the supply of agricultural commodities, and influence the cost and supply of such commodities in international markets. Under the WTO Agreement on Agricultural (AoA), domestic agricultural subsidies that conform to that Agreement are automatically treated as “non-actionable” subsidies under the CVM Agreement (Kleiner, 2000). For the most part, the countries which have experienced strong export growth have lower levels of import protection than countries with stagnant or declining exports. In most of the least developed and other low-income

countries, primary products - incorporating low levels of processing - continue to account for the bulk of both national production and export. Various developing countries believe the subsidies give developed nations farmers an unfair competitive advantage over farmers in their country evidenced by Brazil's request to the WTO for the U.S. to stop subsidizing soybean production because its increases the net export of the good and drives down world prices (Kleiner, 2000).

3.1.3 Safeguards and special safeguard measures

A safeguard is a temporary import restraint that is used to protect a domestic import-competing industry from foreign competition (Bown and Crowley, 2005). Under the GATT/WTO system, when countries negotiate reciprocal tariff concessions, they commit themselves to maximum "binding" tariffs. These commitments restrict, to a considerable extent, a domestic policymaker's authority to unilaterally raise its tariffs at some later date. The GATT of 1947 included two provisions under which countries could reintroduce protective trade policies. Countries remained free to temporarily raise a tariff above the maximum tariff binding or introduce a temporary quantitative restriction under the Article XIX "safeguard" provision. (WTO 2019)

The effect of the use of a safeguard in a small, trading economy is clear. In order to see that, it is important to understand first the demand for a single imported food product, as seen in figure 13. The domestic supply of the goods is shown by curve S, while the demand is shown by curve D. World prices are falling from the initial level of p0 to p1. If a t duty is imposed, the drop in the domestic price will be paid for in full. A partly offsetting tax that decreased the size of the domestic price cut by 85 %would minimize the volatility in domestic prices in reaction to this form in shock to 2% of its original level (P_0 to P_1). Imports will, of course, collapse relative to their point without defence. If domestic prices had fallen from p0 to p1, imports would have risen from (q0–d0) to (q1–d1). In the case of a small economy in which consumer production is measured independently of world demand, average farm income would have risen, and the volatility of farm income would have decreased. The overall cost of food to customers would increase as a result of the safeguard tariff, but the volatility in the cost of food would decrease. Consumers consume less food because of its higher quality, which results in an economic loss estimated by region def in Figure 12. Another cost — as measured by area bcg — is due to lower-cost imports being replaced by higher-cost of domestic productions.

Figure 12: the impact of Safeguards

Source: Hertel, Martin & Leister, 2010

The WTO requires a government to defend domestic exports from legitimate goods (i.e. goods that are not dumped or subsidized by a foreign nation) in some conditions. The hallmark of this type of enforced defence called a safeguard measure, is that it must be immediate and non-discriminatory. For example, a nation experiencing a sudden increase in imports that threatens to inflict serious injury to domestic producers can enforce a temporary non-tariff.

To invoke this safeguard, three conditions have to be met: i) the product in question must have been subjected to the tariffication process; ii) the product must be designated in the country Schedule as a product for which the SSG may be invoked; and iii) the criteria for either a price-based trigger or a quantity-based trigger must be met

The Agreement on Safeguards stipulates the definition of "serious injury", "threat of serious injury" and "domestic industry", which was not clear in Article XIX of the GATT, as well as setting provisions for the duration of measures. Furthermore, it implemented procedural provisions concerning transparency, in addition to including a strict prohibition on voluntary export restraints as mentioned above. The Agreement has detailed content that builds upon past negotiations and processes and is one of the most significant accomplishments of the Uruguay Round negotiations. For example, in terms of the coverage, the Agreement stipulates that, "safeguard measures shall be applied to a product being imported irrespective of its source". (Japan ministry of trade reporte,2015)

The guiding rules of the Agreement with respect to safeguard measures are that these steps must be temporary; that they can be implemented only where products are

considered to trigger or risk significant harm to a competitive domestic industry; that they (usually) are introduced on a non-selective basis; that they are gradually liberalized when in effect; and that the Member is usually enforcing them on the Participant.

Therefore, in relation to anti-dumping and countervailing measures, safeguard initiatives do not include a declaration of an "unfair" activity, they usually have to be enforced on the grounds of the Most Favoured Nation Treatment (MFN) and usually have to be "paid" by the Member implementing them. Recently, in particular, the number of implementations by emerging countries, such as India, Indonesia and Turkey, has increased. Furthermore, Ukraine, which acceded to the WTO in May 2008, and Russia (which acceded in August 2012) tend to actively utilize safeguard measures. Attention needs to be paid to future developments in these countries as their debate on the use of these safeguards goes down to this is how other countries didi it so why can't they even though they haven't in writing this special safeguards . (Japan ministry of trade reporte,2015)

3.2 Big country vs small country effect

This section is to give a an idea of how the effect of the theories above have given the size of the their economic power In the diagrams that follows we use a change in tariffs to try and explain the total effect of the policy by the size of the economy.

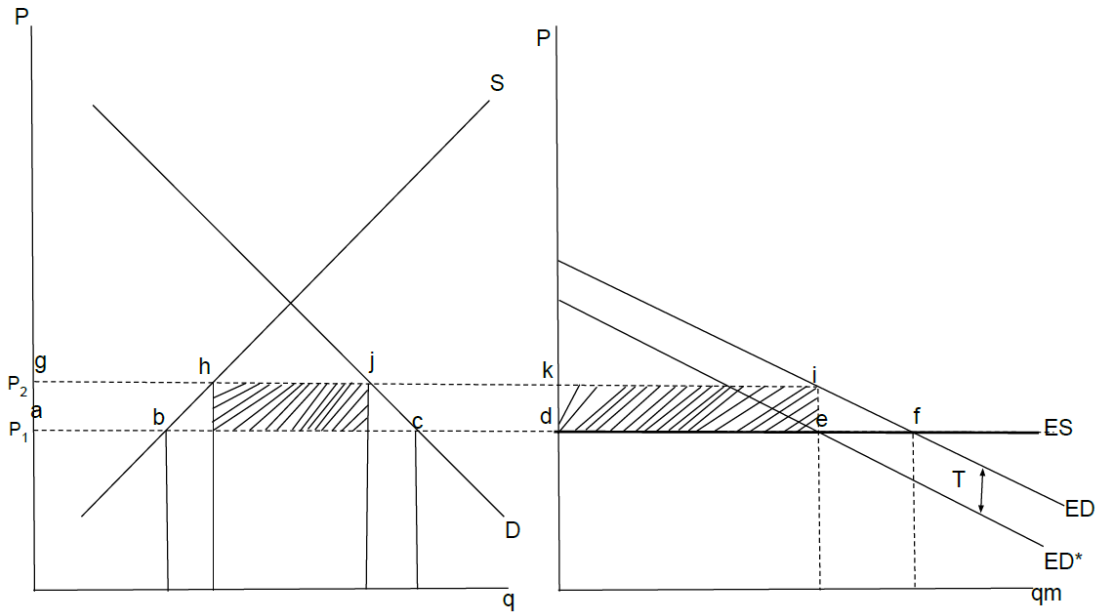
If the country is "small" in international markets, the policy-setting country has a very small share of the world market for the product-so small that domestic policies can not have an impact on the world price of the good. The small country concept is similar to the belief that there is total competition in the domestic market for commodities. Domestic companies and consumers must take international prices as granted because they are too small for their actions to affect prices.

In the Figure 13 consider a small nation which is characterised by an horizontal excess supply function for the rest of the world (ES), are there is no tariffs or any kind of trade distortions applied in this nation the world price is equal to the domestic price (p_1). Domestic producers supply an amount equivalent to ab, and bc is imported and a total consumption of ac. The import of q is equal to df this where the ES intersects with ED.

Now small nation decides to apply a tariff of (T) on the all imports of q. This will cause a shift in the ED shown as ED* in the figure above. This is the function presented in the World marked by the small nation after the placement of the tariff. The interception of the ED* and ES at e shows a decrease in importation by the small only by a small volume but this decrease causes price to increase internally along the ED, as price of the import goods increase domestic consumers shift to the purchase of local goods. Additional domestic supply can be obtained only at a higher price along S but as both internal and external prices increases consumers reduce the use of both along D resulting in a new equilibrium price P_2. Because domestic supplies are increasing as domestic supply fall imports will, the new importer is kl in the world mark and hj in the domestic market. These imports bridged the gap between domestic production gh and domestic consumption gj at the higher price P2. in other words, they paid higher prices and

purchased less Q than they did without the tariff. If imports are not snuff out, tariff revenue will be generated as indicated by the shaded area in the figure below.

Figure 13: Effect of a change in tariff small country case



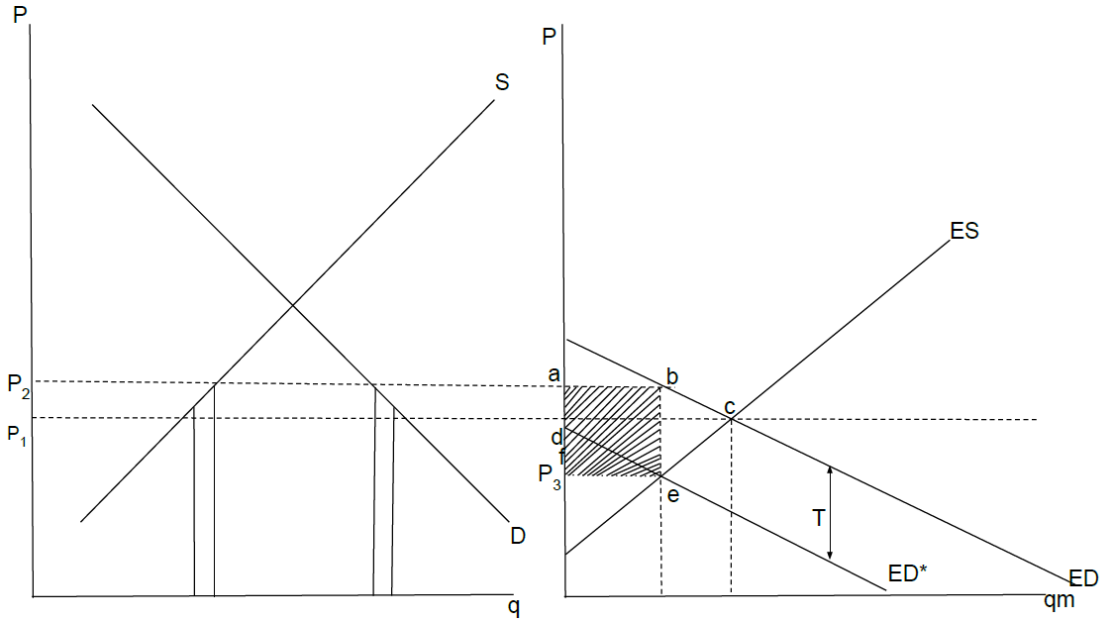
Source: Houck 1992

If the country is "big" in international markets by contrast, the import or export countries have a substantial share of the global market for the product. Whenever a country is big on a foreign market, domestic trade policies will influence the global price of the product. This occurs when domestic trade policy has a sufficient impact on supply or demand on the world market to change the world price of the product.

In a large economy ES are positive hence an increase in its imports will increase the world price. In this situation the imposition of a tariff will have a price increasing effect on the domestic market as in a small country. It will also have a decreasing effect on the world market as the volume of imports decrease from dc to fe. this decrease will result in the fall of prices in the world market as supplies formerly being imported by them are now going elsewhere, this indicates a downward shift along ES and a new equilibrium at from c to e at a new world price at P_3.

Due to the fall in world prices, the domestic price increase caused by the tariff is less than if no change had occurred in the world price. The other impact in the domestic market for the good(q) remains like those identified earlier. Importers still pay the tariff T as they bring ab units in the country, but the incident of the tariff abef is shared by both foreign and sellers who got a low and domestic buyer who paid a higher price.

Figure 14: Effect of a tariff big country



Source: Houck 1992

3. 4 Literature review

The GATT and WTO DSM structures have been subjected to a considerable amount of academic interest, especially over the past decade after the global financial crisis of 2008 and its aftermath on World trade and development. This section is intended to present and discuss the empirical work on the DSM system's functioning. The WTO Dispute Settlement Understanding (DSU) is one of the several annexes to the WTO accord.

Attention is shifted to empirical work that seeks to shed light on the system's actual working. In this segment, papers are reviewed based on what is seen as the two main themes in this dispute settlement: the determinants of conflict participation, and whether WTO membership for developing countries is still justified as a means for them to pursue their development-related interests. A popular claim in the DSM's policy debate is that participation in the DSM process is manipulated to the disadvantage of poorer / smaller countries given all the special rights they enjoy thus why several powerful countries like China prefer to a developing nation status in the WTO (Horn and Mavroidis, 2006).

Horn et al. (1999) focus on the question of whether participation as a complainant in the WTO DS system is biased to the disadvantage of smaller and poorer members, in the sense that they complain less often than they "should". Horn et al. (1999) believe that an impartial criterion in the form of an unbiased benchmark would allow members to complain in proportion to the number of questionable trade measures they face regardless of the exporting countries or product they export. Horn et al. (1999), accessing the information from the first four years (1995-9) of the WTO DSM program and with 4-digit items identified at the Harmonized System level. They show that the actual distribution of bilateral disputes across members are fairly well predicted by their suggested non-biased benchmark, when the latter is adjusted in order to exclude exports with smaller values.

This analysis is substantially refined by Bown (2005). Countries can decide, as co-complainants or as third parties, to resolve disputes themselves, so they can choose not to engage at all, freely dependence on the actions of other nations probably because the litigation can impact them. The determinant for such decisions is defined in Bown (2005) based on 116 situations in which exporting countries ban products arbitrarily during 1995-2001 Disputes are classified into two different groups, based on whether they include discriminatory or non-discriminatory interventions. For any dispute involving discriminatory steps, exporters on the market are divided into two groups: those who are adversely affected by the measure and those who profit (by being exempted,), indicating why a nation will complain or not about a specific measure.

Regarding disputes over measures that adversely affect many trading partners, it is shown that size of exports is positively related to the propensity to complain, in line with the finding of Horn et al. (1999). It is also positively related to participation as a third party, and negatively related to the propensity to free ride. Horn et al. concluded that country's participation in the DSM was relative to their size and small nations complain less than they should as compared to larger countries who complained more than they

should have. This information suggest that developing nations are not participating in the DSM for their own protection. At the end we will see if developing nations are active in the system or not.

Some notion of trade interest can go quite far in explaining the distribution of disputes across countries, but it cannot provide the whole picture. Two intuitively appealing hypotheses have therefore been examined in the literature. According to the "legal capacity hypothesis" (Busch et al. 2009), the lack of legal capacity prevents developing countries from participating as complainants as much as they "should". They may face capacity constraints that limit the number of cases they are able to pursue. By capacity we mean the resources available to identify, analyse, pursue, and litigate a dispute. The second hypothesis, dubbed the "power hypothesis", holds that developing countries complain less against developed countries than they "should" due to their lack of "power". Power in this case refers to the political hurdles faced to bringing cases, Despite the DSU's attempt to take politics out of dispute resolution, politically weak countries may be deterred from filing a dispute for fear of some sort of retaliation by the would-be defendant.

There is empirical evidence that retaliation takes place (Guzman and Simmons, 2005). Busch and Reinhardt (2003) find that filing a case against a country increases the likelihood that the defendant will file a complaint against the original complainants by 30%. Various reasons have been suggested, such that they do not expect to be able to enforce rulings, or that they fear a back-lash in other forms, such as loss of preferential treatment in trade, or some form of non-trade retaliation such as reduced foreign aid, or military (Horn and Mavroidis, 2006). They compared the DSM cases and outcomes with non-trade relations between the two countries involved between 1994 and 2005. The question here is are there any measures to prevent the use of power by developed nations to deter developing nations from enacting WTO rulings. This study intends is to find out if there is any relationship exist between how developed countries use the system and how developing nations on the other hand use the system. is there pressure to settle to avoid rotatory cases against them by examining if there is a correlation between GDP and propensity to settle.

Guzman and Simmons (2005) shed more light on the definitions of the determinants of participation in the legal capacity and power hypothesis by running an OLS regression on the GDP of the defendant against a number of explanatory variables, and controls. Their data set is based on bilateral disputes in the WTO between 1995 and April 2004, as defined by requests for consultations. The control theory taken by Guzman and Simmons (2005) applies to the amount of force exercised by a participant outside the framework (such as a withdrawal of aid) without including those wielded by the multilateral structure (such as the amount of compromises which can credibly be placed under pressure by a claimant of withdrawal). Guzman and Simmons (2005) also have additional legal capacity proxies. It comprises the statistics of embassies abroad, non-military government expenditure for countries and the efficiency ranking of government bureaucracies taken from the *International State Risk Handbook* (Wenger, 2008) in

addition to the generally used metric reflecting the size of the Geneva delegations of countries.

Overall, Guzman and Simmons (2005) see their results as supporting the primacy of the legal capacity hypothesis over the power hypothesis as an explanation of the choice of respondents. More generally, they conclude that even though it is very difficult to determine a non-biased benchmark for developing countries participation, these countries seem constrained by limited legal resources to challenge other members in the system as frequently as richer countries. Because of such constraints, developing countries are more selective as to which cases they challenge before the WTO. However, lack of "power" does not seem to be an important explanatory factor. This might account for the reason why sometimes the WTO development members come together to act as a big country to increase their capacities.

Francois, Horn and Kanitz (2008) argue that GDP per capita does not account for the reality of some developing countries: 'for instance, certain countries have a highly educated elite, with excellent knowledge of WTO law, while at the same time having very low per capita income. India is an obvious example.' As a result, they propose that GDP should only be used as a 'proxy of the absolute amount of legal capacity of a country'. This study does not embark on a similar regression analysis but a simple regression is consideration to determine how with the size of countries matter in disputes at the WTO.

Horn et al. (1999) examine the popular claim of "power hypothesis" in a simplistic manner using the scale of the WTO delegations in Geneva as a metric for countries legal capacity. To shed some light on the power hypothesis, Horn et al. (1999) aggregated WTO participants into four classes – G4 (US, UK, France and Germany), other OECD nations, Less developing countries (LDCs), other than least developing countries and LCDs with the first four years of the DSM. They questioned whether the trend of litigation of the poor support strongly the notion that countries with expanded legal expertise are more trigger happy, more dominated by corporate interests.

The role of the legal and power hypotheses is also examined by Bown (2005). Bown (2005) sees some support for the legal capability hypothesis, albeit low between 2001-2005 for WTO members Each countries' capacities have been predicted by GDP per capita coefficients and the size of WTO delegations. Bown (2005) also demonstrates that a certain type of power hypothesis is important to decide whether to prosecute, function as a third party, or abstain in conflicts concerning illegalities which adversely affect a certain number of countries in the bilateral relationships between the exporting nations and exporters firms. It is thus shown that a high share of the respondent's exports going to a certain country makes it more likely that this country will be a complainant (and less likely that it will free ride). A possible interpretation here is that "power" matters in the decision to complain, since such a high share makes the enforcement possibilities stronger. However, this relationship holds also when considering only a subset of fairly large exporters, where there would intuitively seem to be less role for "power" to be at play. Bown's interpretation thus seems to be either that this intuition is

flawed, and that "power" is important also in the relationship between more developed countries, or that the relationship captures something else than what associates with "power".

The influence of the introduction of the DSU on the length of disputes was analysed by Grinols and Perrelli (2006). They develop a framework for forecasting whether there were more conflicts before the WTO and whether the DSM has bought shorter disputes. To investigate these predictions empirically, by varying forms of duration analysis, the researchers evaluate three kinds of conflicts, all concerning the United States: USTR Section 301 disputes 1975-2000, GATT disputes 1975-1994, and WTO disputes 1995-2000.

Reinhardt (2000) considers the role of democratic leadership for participation and provides a different viewpoint on participation in the DSM process. Using a rich data set comprising all 604 "bilateral" disputes that occurred during the period 1948-1998. The statistical models employ, in addition to indices for democracy, a number of explanatory variables capturing aspects of GATT/WTO members, and use various probit model specifications.

A country's choice to start a dispute is the result of a domestic political process and the nature of this procedure should depend heavily on the political institutions of the country, especially as the private parties are not present before the WTO and therefore government institutions or politicians have to decide the disputes to be brought before the WTO. A variety of facets of this topic are discussed by Reinhardt (2000), including whether governments are likely to complain before the WTO. Several theoretical arguments can be formulated in any manner, and the trigger is unclear, even though the political system appears rational to affect the tendency point.

This concludes the point that there could be a number of reasons why a non-democracy does not initial dispute settlement. Does this account for the reason why some countries no request for consultation?

Busch (2000) finds that during the GATT period, disputes between democracies were more likely to be settled during the consultation stage, compared to when either of the parties to the dispute were less democratic. The pattern did not persist, however, once a panel had been constituted. Busch (2000) also shows that countries with a large trade to GDP ratio were less likely to settle both before and after the consultations.

Busch (2000) takes such an approach when studying the impact of the 1989 Dispute Settlement Procedures Improvement reform, which provided for the right to a panel. The main conclusion of Busch (2000) was that the 1989 reforms, which supposedly strengthened the DSM system, did not promote more compromises either during the consultation or the panel stage. The study estimates several logit models employing data on bilateral disputes for the whole GATT period (1948 to 1994) also found that, counter to what might be predicted, respondents with a larger share of GDP tend to settle less in the consultation process. Three separate binary dependent variables are included, indicating whether partial or full remedies are agreed during the consultation phase,

whether the dispute was panelled, and whether there are concessions during the panel stage. The independent variables include a dummy for whether the year is before or after the 1989 Improvement, and a variable capturing the dyad's joint democracy score. A number of additional explanatory variables are used, indicating for instance, the number of complainants joining the dispute, whether it is brought by a developing country against a developed country, the degree of trade dependence, and the trade openness of the parties. Busch's study confirmed the assumption that development of DSM favoured mostly developed nations as compared to developing nations due to their higher legal capacity as compared with developing nations. The empirical evidence presented by the Busch and Reinhardt (2003b) shows, although this is not relevant to the grievances from developing countries or for EC-United States ' disagreements, the DSU emergence substantially increased respondent's willingness to accept in the form of aggregate US. However, the more favourable picture during the WTO years does not stem from an increase in early settlement due to the introduction of the DSU, but is instead argued to be the result of the expanded scope of actionable cases, and more rich country complaints against developing countries. During the WTO era, richer complainants (in terms of GDP per capita) have been more likely to induce settlement than poorer countries, controlling for differences in GDP. But contrary to what one might assume however, the authors argue that this is not because richer complainants find it easier to induce compliance, nor is that poorer countries disproportionately lose disputes, but instead because they are less successful at inducing other countries to settle. This concludes that the emergence of the DSU was of little help to developing nations as it became difficult to settle a dispute. A look at the time frame of dispute at the DSU involving developing nations should provide some insight into whether this persists in the WTO and severs a deterrent for developing countries to use the system and suffer unfair practices

A second point in the literature is when resolution during the procedure is most likely? Reinhardt's (2001) use of GATT conflict data was made of two structured probit models between 1948 and 1994. The dependent variable is an ordinary measure which specifies whether or not the respondent has entirely, partially or completely authorized the applications of the complainant. Though Busch (2000) is not specifically based on this issue, it is compatible with Reinhardt's (2001) findings. They demonstrate that developing countries will have fewer chances of making progress not because they are more likely to lose confrontation than rich nations, but because they cannot take advantage of the preliminary panel mediation process. The explanations are not the practice of regulation but rather the lack of legal power. The question being asked here is does the DSM favours a country with stronger legal institutional framework and laws that are implemented, then it does to others with less legal capacity to find and use loopholes in the legal framework to get away with wrong doings given all the elaborate legal stages a dispute has to go through before a decision is made. Is this a scare tactic to deter poor countries from complaining. This study will look at all the cases involving developing countries from 1995-2019. To see how many cases they win or lose and in what form do they participate (complainant or respondent). An effort is made to

determine whether there is evidence that developing countries settle, or drop their cases dues to their legal and power capacities represented by their GDP in this case.

Guzman and Simmons (2002) discuss democracy's role in terms of the propensity to settle cases, but from a different angle. Their argument is based on the assumption that transfer payments between states are expensive and unyielding trade-related interventions are probably harder to accept than constant initiatives. One natural solution to this indivisibility issue is to incorporate a sort of side payments or to extend bargaining by introducing additional questions.However, Guzman and Simmons (2002) suggest that this is more complicated for governments, because it is much harder to resist reform in the resistance to growth from the open industries.

The debate so far has been to represent the main themes in the empirical literature. There are therefore a number of problems in this literature that need to be resolved for the findings to become more than just suggestive. A first difficulty is the selection of a unit of account. The relevance of this topic in literature is indeed well-known. Some reports use other concepts to describe the reciprocal essence of conflicts in various aspects. However, we are not aware of any study that seriously contemplates what is “one” issue in a complaint. For example, is the EC banana (DS 27) was it about one issue; The EC banana import regime,or was it about several issues, such as the distribution system, quantitative import restrictions, etc? Or, to take the EC - Sardines dispute (DS 231): was it about the labelling of sardines, or about the role of international standards, or both? More generally, we are not aware of any attempt to derive the definition of “one” dispute from any underlying theory. At the same time, we add up number and seek to draw inferences on the basis of these numbers. The non-biased normative definition is obviously another critical issue in sample prejudice studies. For example, Horn et al. (1999) suggest each State will worry about how often illegal activity crosses a lower threshold in the case of an objective scenario. It is highly uncertain whether companies with revenue of 1 million USD will do so as well for a small country as for a company with sales of 100 USD.

Section 4: Data and Methodology

4.1 Data

The study uses dispute settlement cases from 1995 to 2019 accessed from the WTO/DSM website (WTO 2019). The data set contains the cumulative cases from DS1 to DS593, as no subsequent cases were investigated. Of the 593 cases reported with the WTO Dispute settlement Body at the time of writing, only 346 (58%) of them contributed to the creation of a panel. In situations where more than one nation is listed as a disputer, the first nation to file the complaint is classified as a disputer.

This study covers disputes involving developing countries either as respondents or compliant but not when they were third parties to the cases. Out of the 346 cases 250 involve developing countries either as compliant or respondent. The cases involving developing countries were grouped into three categories: cases involving dumping, subsidies and countervailing measures, and cases involving safeguards measures. There are 153 of the cases involving developing countries that fall into these categories. The other 97 cases were classified as other were with the same importance as the rest of the cases. The cases involved various commodities and sectors. This allowed us to sub-categorize the disputes into three sectors namely agriculture, manufacturing/ industrial, and services sectors. The data provides dates on the various stages of proceedings in the DSM, legality/agreement, commodities and sectors involved. This allows tracking of disputes for their duration as well as compliance by members in the data set. One can identify how the proceedings follow the required timeline stipulated by the DSB. GDP, export/import data (value, volume, prices, trade as % of GDP) will be used. The IMF policy tracker was used to assist in assumptions about some countries. GDP per capita figures and rankings are based on calculations of the International Monetary Fund (IMF, 2020).

The limitation of the data is the technical legal context in which they are framed. It is very difficult in several cases to understand what the panel decision means in a single case. There can be a violation and non-violation, that is “win/lose” is not really a descriptor that can be tied to WTO disputes. A party might win one small notification violation, but lose on all the larger substantive claims, so either party might count that as a “win.”

4.2 Methodology

The purpose of this study is to explore, describe, and understand whether developing country membership in a multilateral institution such as the WTO makes sense for developing countries. Membership entitles developing countries to be treated fairly by the larger, richer countries, i.e., that its trade policies and programs and those of other members must comply with the rules requiring non-discrimination, predictability, and transparency. However, membership might imply limits on the use of trade policy and programs intended for national strategic and economic development purposes.

This study evaluates/assesses the DSM system, by conducting a qualitative descriptive study aimed at describing the DSM’s fairness based on available data, given the current state of the system, any challenges they may be experiencing, and what is required to

make the system effectively. Lambert and Lambert (2012) stated the following about descriptive studies: “The goal of qualitative descriptive studies is a comprehensive summarization, in everyday terms, of specific events experienced by individuals or organization”.

A quasi-qualitative research strategy is especially applicable for the purposes of this study, where it was important to create a connection between several different variables through interpretation. The study tries to establish a link and established patterns between the disputes and related variables to answer the posed questions.

The analytical strategy of this paper consists of studying disputes involving developing countries , economic data, in conjunction with analytical reports provided by the DSM panel and any other supporting country-specific data such the their percentage share of GDP on trade , their current development policies etc .

To be successful, the mechanism needs to be able to provide quick access to all Member States, rich and poor alike, to address conflicts in a reasonably short period of time, and to ensure that decisions are complied with within a fair period of time. This concept is confirmed by the DSM, where members have claimed that "prompt settlement" of conflicts is "key to effective dispute resolution." The DSM has claimed that the purpose of the WTO dispute settlement mechanism is to ensure "protection and predictability of the multilateral trade framework," to "preserve the rights and responsibilities of Members under the agreements protected and to clarify the current provisions of such agreements. "To focus its judgment on the efficacy of the WTO dispute settlement system (WTO, 2019).

The study is guided by the following research questions

1. To what extent do developing countries use the DSM? Is it used equally by developed, emerging and least developed countries? Are developing countries more likely to settle disputes in consultation than developed countries? If so, why is this the case? Was there a link between the gross domestic product (GDP) or GDP per capita of WTO member countries and the degree to which they use the system?

2. Have developing countries challenged other member states and won their cases against developed countries based on economics, legality and/or on the special provisions provided to developing countries in WTO rules?

3. Do developed countries comply with rulings when they lose to developing countries? Do developing countries comply when they lose? How do the rates of compliance compare? It is to be investigated whether the disagreement over compliance measures represents a good-faith disagreement between the parties on how to interpret the resolution of the WTO panel or AB, as well as the applicable provisions of the agreements.

4. What is the average time for a dispute between north-south versus north-north to be resolved as compare with the scripted timeframe by the DSB? Does the duration differ when it involves developing countries and when it involves developed countries?

To examine the performance of developing nations in the WTO the 15 biggest developing economics are used a as proxy for developing nations to identify how they are doing at the DSM. Request for Consultations are submitted under various instruments: legality, economics, or special provision as defined under the WTO agreements. Following the submission of a Request for Consultation and during or after such consultations, the parties to the dispute may reach an agreement to settle the case. This occurs regularly and, in that case, there is no need to start or conclude a panel procedure. The interested is in looking at how developing countries might be more likely to settle than wealthier countries and finding explanations for why that might be. The work involves investigating whether there is a statistical correlation between the number of times the WTO Member State has initiated dispute settlement procedures by filing a Request for Consultations and the GDP per capita of that Member State using the Atlas Method. The Atlas instrument is a technique used by the World Bank to measure the size of the economy in terms of gross national income in US dollars. Since the data are not normally distributed and have outliers, the non-parametric Spearman's rank correlation coefficient will be used. The Spearman rank-order correlation coefficient is a non-parametric indicator of intensity and direction of interaction that occurs between two variables evaluated at least on the ordinal scale. This will help to determine if there is a link between filling for a complain and the size of economy.

Active and effective trade policymaking depends critically upon consultation between the government and the private sector, and between the many different governmental bodies that are either directly or indirectly involved in making and executing trade policy in response to development strategies. This consultation is important for good public policy because the government decides where to inject equity for industrial policy, offer subsidies, increase tariff protection, demand transfers of intellectual property, restrict foreign involvement to minority involvement in a joint venture is "unfair" and "illegal" in compliance with WTO rules. Nevertheless, these problems are primarily implicated in cases involving developed countries i.e. dumping, subsidies and CVMs and safeguard. This may constitute a trade off from tailor made trade policy spaces and WTO agreement. National policy spaces i.e. industrialization, export bases economy etc of various developing countries by the information captured

in the IMF policy track and compared with cases filed against the countries. To see if countries are target of dispute because of their development policies. the is if developing countries becoming targets once their GDP% in trade changes as a result of some policy implemented. The policies are listed on the IMF website and there can not go in to details of who they were collected.

If a Member State which has lost in the dispute settlement procedure continues to refuse to comply with the decision of the DSB, the prevailing Member State can decide that the only way to induce compliance is to ask for the suspension of concessions (request for article 21.5) (Reich ,2017). In the time under review, the suspension requests sent to the DSB were used as a proxy for non-compliance (based on the rational presumption that, if a losing Member State fails to comply, the winning State will submit a request for suspension), suggesting the overall compliance rate of the DSM. To find the compliance rate of member the approach is to divide the number of complainants involved in disputes among developing countries where at least one violation was found, by the number of suspension requests and same for developed countries to determine who complies the most. First, we will check the total compliance rate of the DSM if the compliance level is high, we will assume the system is effective. Then do same for both developing and developed countries to see if there is in abuses the system. the expectations the developing countries compliance less under the presumption that the issue in all of these cases is not that of legal misunderstanding as to the nature of the ruling, but rather one of reluctance or political inability to comply with the ruling. Similar examination is done for the three categories of grouped disputes with the expectation the cases involving dumping will have less compliance due to the complexity of the subject matter.

An important component of a dispute settlement system's effectiveness is the time that it takes for it to resolve a dispute. "Justice delayed is justice denied", is a well-known legal maxim. The drafters of the DSU were well aware of the need for "the prompt settlement" of disputes, and that it is "essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members. In this view, attention is turned to examining the actual duration of dispute settlement procedures requests submitted between 1995-2019 in the WTO and to see whether there has been any change in this respect over the years, by comparing cases involving developing countries and those that do not involve developing countries. What is to be

measured is the time between the date of such a request and until adoption by the DSB (whether the panel report had been appealed or not).

5. Result and Discussion

5.1. To what extent do developing countries use the DSM?

5.1.1 Results of performance of developing countries

In view of the performance of developing countries collected from participating in the dispute settlement system, an analysis is undertaken from participation in the dispute settlement system by the 15 biggest developing countries. The 15 biggest developing countries as complainants are not all the same as the 15 biggest that are respondents. The focus on the top 15 countries from both aisle that is biggest 15 developing countries as compliant and top 15 biggest developing nations as respondents.

As showed in table 6 these countries have a better "winning" record when they are complainants than when they are respondents. This supports the view that countries typically seek cases that they find possible winners (Johannesson and Mavroidis 2016). As complainants, they prevailed, partly prevailed, or found a mutually agreed settlement in 48% of cases (excluding on-going cases). About 57% of cases settled usually involved aluminium or steel and about 56% of cases won involving developing were either cases involving issues related to agriculture, safeguard measures and subsides and countervailing measures and involved agricultural goods or products and manufacturing inputs. This is not surprising given that a most developing countries are agricultural and manufacturing input goods exporters.

Horn et al. (1999) focus on the question of whether participation as a complainant in the WTO DSM is biased to the disadvantage of smaller and poorer members, in the sense that they complain less often than they should. information from table 6 may support this claim given the biggest developing nation in terms of complaints used the system 33 that is that is 91 times less the just the US and a combined total of the top 15 developing nations is only 40 less than only the US.

As respondents, the corresponding statistic is 25% of cases. In both categories, about 40% of cases have been dismissed, withdrawn or dropped for unexplained reasons. The "losing" record is higher as these countries join as respondents, with some 35% of cases lost than when they launch cases. Only 13.5% of cases are lost. The bigger a developing countries as a percent of GDP on in trade increases the higher the propensity of an increase in their actives in the DSM. Using Brazil as an example, the participation of Brazil has been steady since 1995, with good advocacy between 2000 and 2002. Brazil submitted a quarter of the complaints in 2000. There are two theories that may justify the focus on these years. On the one hand, the devaluation of the Brazilian currency in 1998 caused many business industries to complain to the government about rising barriers in export markets. At the other hand, at the beginning of the decade, the structural elements mentioned above were present, including the capability of government officials involved in trade disputes and concerted pressure from corporate lobbies.

The relevant issue, concerning the extent of Brazilian participation in the DSB, concerns the degree of success of the applicant. Some may argue that the rate of achievement will

act as a motivation to submit new situations, either because government officials benefit differently from exposure, or because winning has a deterrent effect on other national economies threatened by related barriers to trade. If this inference is right, the good outcomes obtained by Brazil can also be suggested as a catalyst for further boldness in new cases. This was evidence in the increase of brazil's trade as % of GDP from 22.64% in 2000 to 27.62% in 2002.

Even when Brazil was on the other side of the table as a respondent, there was no disastrous result of the WTO dispute resolution scheme. In fact, the majority of cases against Brazil did not reach a panel decision. This can be explained by the fact that some of the initiatives opposed before the WTO were temporary, such as interim incentives for the automobile industry at the end of the 1990s. As a result, the complainants lost opportunities to participate in complex cases at the DSB even as a matter of policy.

In view of the Brazilian advocacy of the DSB, the valid question is that the allegations do not cause the respondents to reciprocate with the arguments against Brazil in a typical "tu quoque" response. However, the study of the events does not offer any evidence that may confirm this connection. The lawsuit and the concerns posed against Brazil seem to be separate from prior allegations made to the DSB. The exception could be the EC-Sugar case (DS 266) and the Canada-Aircraft case (DS70). In EU-Sugar case is discussed below, after Brazil submitted its argument, the OECD (induced by France) started a long report on the Brazilian agricultural markets, with specific attention to the subsidies given to local farmers.

Bown (2009) notes that there is a reciprocal pattern in disputes involving developing economies. As they to become greater exporters and have used the system to protect their market position internationally, other WTO participants, including developing countries, have also sought to defend their own market rights in these developing countries. Table 15 agrees with the findings from Bown (2009)

Table 8:Performance of Top 15 developing countries in the WTO

Economy	Won	Mixed	Mutually agreed Solution	Terminated/ withdrawn/ Dropped	Lost	Ongoing	Total
As complainant							
Brazil	9	1	2	15	3	3	33
Mexico	5	1	5	9	3	2	25
India	8		1	11	3	1	24
China	6	3	0	4	2	6	21
Korea	5	3	1	4	4	4	21
Thailand	6		1	6		1	14
Indonesia	2	2	0	3	3	1	11
Turkey	2	0	0	3	3	1	5
Vietnam	3	0	0	0	0	2	5
United Arab Emirates	0	0	0	0	0	2	2
Hong Kong	0	0	0	1	0	0	1
Malaysia	1	0	0	0	0	0	1
Singapore	0	0	0	1	0	0	1
Total of 15 economies	47	10	10	55	19	23	164
AS respondent							
China	0	3	6	11	18	6	44
India			6	9	10	7	32
Korea	3	5	4	2	2	2	18
Brazil	1		1	10	4		16
Mexico	1	1		8	4	1	15
Indonesia		1		5	8		14
Turkey			2	5	2	3	12
South Africa				5			5
Thailand	1			2	1		4
Saudi Arabia						2	2

Malaysia				1			1
United Arab Emirates						1	1
Total of the 15 economies	6	10	19	58	49	22	164

source: Worldtradelaw.net 2020

Note: won = the panel finding is in favour of the complainant in panel a (or respondent in panel b); mixed = some findings are against the complainant while others are against the respondent; lost = the panel finding is in favour of the respondent in panel a (or complainant in panel b); ongoing = case is still in process

The implementation of the dispute settlement system by the 15 biggest developing countries or the "winning" record does not offer a complete description of the success of the system in the compliance of laws and market access obligations. The satisfaction of the complainant's interests in the form of a mutually agreed solution or compliance with the binding recommendations of the report in question or the rebalancing of concessions by way of compensation is critical. Repeated activation, however, is a measure of confidence in the system (Reich 2017). The level of confidence is in the system is exhibited in the rate of mutual settlement. It is the view the more there is a direct correlation between mutual settlement and confidence in the system

I have analysed whether there is a statistical link between the number of times the WTO Member State has initiated dispute resolution procedures by filing a Request for Consultations and the GDP per capita of that country. Since the data is not normally distributed and has outliers, the non-parametric Spearman rank link coefficient has been used. The correlation coefficient for the relationship between the GDP per capita and the number of times the country has filed a request for consultation was 0. 426.This represents a statistically significant, at a 5% significance level. The correlation coefficient for the relationship between GDP and the number of times the request for consultation was 0.679, which is far higher. Thus, a country's GDP is a stronger indicator of its propensity to initiate a complaint at the WTO dispute settlement system than its GNI per capita.

Table 9: Income classification and dispute (1995-2019)

Income level	Average GDP	GNI per capital (using the world bank Atlas method)	Number of cases
High- income countries	$54,205,741	$12,376 or more	333
Upper-middle income	$424,446,133	$3.996-$12,375	152
Lower- middle income	$6,702,153	$1,026 -$3,995	108

Lower income	$588,230	$1,025 or less	0

Source: World Bank, 2019

Horn, Mavroidis & Nordström (1999), use the size of countries' WTO delegations in Geneva as a proxy for country's legal capacity and ability to detect and challenge violations. They find that countries with more legal capacity litigate more, controlling for trade interests. However, this relationship is rather weak in their study a similar, but not identical, finding was reached by Francois, Horn and Kaunitz(1999), based on data from the first 12 years (1995-2006). They see GDP as a proxy for legal capacity. However, it may also be a proxy for the ability to bear legal and political costs. Guzman & Simmons(2005), on the other hand, include the number of embassies abroad, countries' non-military government expenditures, and an index for the quality of government bureaucracies and conclude that the capacity hypothesis is better supported than the power hypothesis, but also find that poorer complainants have tended to focus on the big targets, where the potential gains are bigger, a strategy that is consistent with a tight capacity constraint, rather than a fear of retaliation. information from table 7 suggest a similar pattern that GDP and GNI plays a bigger role in the use of the DSM and countries with bigger GNI or GDP are more likely to use the system.

5.1.2 Is there a higher propensity for poorer countries to settle?

From the above analysis a country's GDP is a better predictor of its willingness to launch a dispute settlement case in the WTO than its GDP per capita. A similar result has been recorded by Horn, Mavroidis & Nordstrom (1999) and Reich (2017).

Following the submission of a request for consultation and during or after such consultations, the parties to the dispute may reach an agreement to settle the case. This occurs regularly and, in that case, there is no need to start or conclude a panel procedure. the issue is to see if whether developing countries are more likely to settle than richer countries. The results are displayed in table 10. The statistics do not lend much support to the idea that developing countries prefer to settle more than rich countries to save costs because there are too close. The proportion of complainants who decide to withdraw their petition after a mutually agreed agreement has been found is just marginally higher for lower- middle income countries (21.65 %) than for high-income countries (19.49 %) – less than 2.5 % – which is not important enough to draw conclusions. This is especially true, considering this upper-middle income countries appear to settle marginally less (19.72%) than high-income countries, and there seems to be little connection between income and willingness to settle. Only a marginal gap can be found in relation to respondents who decide to settle, where the figure for high income countries (18.82%) is marginally lower than that for lower middle income countries (19.14%) which, in effect, is slightly lower than that for upper middle income countries (20.51%) but the disparity is not very large. It should note that the above figures apply to mutually agreed solutions reported to the DSB by the Member States concerned at every point of the proceedings, including where such an agreement has been reached after the panel and the AB report.

Table 10: Percentage of Parties that Agree to Settle or Terminate the Case (1995-2019)

	Percentage of Complainants that Settled	Percentage of Respondents that Settled
High Income Countries	19.49%	18.82%
	(69/354)	(68/343)
Upper Middle-Income Countries	19.72%	20.51%
	(28/142)	(32/156)
Lower Middle-Income Countries	21.65%	19.14%
	(21/97)	(18/94)
Low Income Countries	0	0
	(0/0)	(0/0)
Total	19.9%	
	(118/593)	

Out of the 188 cases that were settled or mutually terminated 13 of these cases involved anti-dumping, 5 cases involved issues relating to safeguard measures and 5 cases on CVM. This accounts for approximately 19.5% of cases there were settled or manually terminated. High-income countries settled a total of 34.8% (8/23) as complaints and 65.22% as respondents (15/23). Other the hand middle income counties (upper and lower) settled a total of 65.22% (15/23) as complaints and 34.8% (8/23) as respondents. These confirms that poor countries settle more as respondents. 57% of cases involving developing countries and safeguard measures while only 19% of cases involving issues related to dumping and anti-dumping were settled mutually one could not help but speculate this was a s result of the easy in understanding the legal frame work both agreements and settlement is not really about level of income but the reality of the issues involved. This is in line with the finding of Horn et al. (1999) that developing there is correlations between participation in the DSM and GDP or size of country.

17 cases involving agriculture were settled mutually or terminated, and 11 cases involved sanitary and phytosanitary measures, 14 cases involving issues concerning intellectual property (TRIPS) 13 cases involved technical tarriers (TBT) to trade. 0ut of 118 cases that were settled mutually by developing nations approximately 62% involved agriculture with about 16% of the cases involving TRIPS or textiles and clothing. This shows the developing nations are more likely to settle on cases involving issues relating to a higher percentage in GDP in trade.

Cost issues involved with the dispute settlement system are of interest to developing countries in their effort to engage in the WTO. The expanded legal complexity of the dispute settlement structure from its precursor, GATT, became central to the high cost

of WTO litigation. The old GATT strategy operated based on a 'small group of like-minded foreign policy officials working together. This can be assume as the reason for the quick to settle nature of low-income countries.

Although the inherent expense (GDP was use as a replacement of cost) of the WTO dispute resolution mechanism is a deciding factor for the involvement of developing countries, it is not at the heart of the issue. The fact that the WTO program includes a variety of ways in which developing countries can reduce the cost of involvement indicates that the issue lies more with the willingness of developing countries to initiate proceedings. Bown (2012) brings us to the heart of the matter. There seems to be nothing in the WTO system per se that needs to be changed in this case. Rather, it is the problem of internal governance and organization in many capitals that could be responsible for the relative absence of many WTO leaders. In accordance with involvement in the dispute resolution system, participants are expected to have an internal capacity to bring trade infringements to the WTO. Although these capacity problems are country-specific, by evaluating the internal ability of successful developing countries with the ability of those developing countries with low participation rates, areas for development can be identify.

5.2Have developing countries challenged other member states and won?

5.2.1 Results based on types of cases

As to the types of measures contested, import restrictions and antidumping and countervailing measures account for 42% of all cases in which the 15 largest developing economies are respondents. While these 15 economies have activated the system to address different types of measures, almost 40% of the cases in which they are complainants are on antidumping and countervailing measures, and safeguard measures an area of high contention in the system. As their share of GPD of exports and trade increase their activeness in the system increases and their success rate increases as well.

Table 11 show that, Brazil, Mexico, India, China, Korea, Thailand, Indonesia and, to a lesser degree, Vietnam and Turkey have actively and successfully invoked the DSM to defend their commercial interests in both advanced and developing countries. Incidentally, these countries are also the biggest exporting developing nations.

Table 11. Developing countries as complainant in WTO cases, selected countries

Types of cases	Cases brought by Brazil against			Cases brought by Mexico against			Cases brought by India against		
	Dcs	Ldcs	Total	Dcs	Ldcs	Total	Dcs	Ldcs	Total
AD	4	4	8	6	5	11	6	2	8
CVM	7	1	8	1	3	4	2	0	2
SGs	1	1	2	1	1	2	1	1	2
AoA	2	3	5	1	1	2	1	0	1
Other	8	2	10	4	2	6	2	8	10
Total	22	11	33	13	12	25	12	12	24

Source: Worldtradelaw.net 2020

As showed in table 12 as their participation in world trade increases as a percentage of their GDP, so does their participation in an effective mandatory and binding mechanism for conflict resolution. Preserving such a mechanism, including the quasi-automatic adoption of the WTO panel and the AB reports under the reversed consensus rule, becomes a first-order priority in a global economy riddled with trade friction.

Table 12: selected country GDP% of trade and request for consultation

Country name	Year	Trade as % share of GDP	No of request for consultation
Brazil	2000	22.64%	4
Brazil	2001	26.94%	10
Mexico	1999	50.62	3
Mexico	2000	52.43%	6
India	2017	40.77%	2
India	2018	43.38%	7

source: WITS, 2020 Note request for consultation here involves them either as respondent or complaints

From table 13, Brazil won 9 of 33 completed cases. Mexico 5 of 25. India 8 of 24. China 6 of 21, Thailand won 6 out 14 cases. This numbers are low compare to the nmbers cases All of China's 21 complains are against developed countries and involved issues of dumping(with DC as dumpers dumper) or , CVM, tariffs or safeguarding this is a direct result of chain's position as the world's biggest exporter. Brazil's impressive win records comes on the back of their aerospace industry where they complain about subsides provided by developed countries to their aerospace industry (DS56,70,222) on issues from AD to SMC (Welbe, 2017). Thailand, on the hand, is an enforcer of the SMC and AoA agreement as all 6 of it wins are disputes request base on this agreement. This indicates that against developed countries are more likely to initiate disputes based on the special provisions provided to developing countries and/or legality rather than economics. Developing countries are more likely to initiate disputes on issues which affect a large portion of their GDP and are more likely to lose on issues involving infant industries argument in these countries due to SMC and export subsides. Developing counties are also more likely to complain against fellow developing nations on issues relating to subsides especially relating to agricultural and food production. This was evident in as almost 48% of cases filed against developing countries by fellow developing countries involved food or agricultural production in one way or the other. These figures are based on statistics collected by the commercial website Worldtradelaw.net

Table 13 parents a breakdown load of win and lose by type of disputes by some selected developing countries

Table 13. Developing countries as complainant in completed cases

Types of cases	Cases brought by Brazil against:				Cases brought by Mexico against:			
	Dcs		Ldcs		Dcs		Ldcs	
	Won	Lost	Won	Lost	Won	Lost	Won	Lost
AD	2	0	1	2	0	0	2	1
CVM	4	3	1	2	0	0	0	0
SGs	0	0	0	0	0	0	0	0
Other	1	0	0	0	0	0	0	0
Total	7	3	2	4	0	0	2	1

Source: Worldtradelaw.net 2020

Table 14. Developing countries as respondents in WTO cases, selected countries

Types of cases	Cases brought against China by			Cases brought against India by			Cases brought against Korea by		
	Dcs	Ldcs	Total	Dcs	Ldcs	Total	Dcs	Ldcs	Total
AD	8	0	8	1	3	4	2	1	3
CVM	9	4	13	4	1	5	3	0	3
SGs	0	1	1	0	1	1	1	0	1
AoA	1	0	1	7	1	8	5	0	5
Other	19	2	21	13	1	14	6	0	6
Total	37	7	44	25	7	32	17	1	18

Source: Worldtradelaw.net 2020

China and India account for 46% of the cases brought against developing countries. This high number is because of their export-oriented economy. China and India together make a total of 7.2% of global export and exports alone accounts for 20% of China' s 2018 GDP. It is not surprising that almost 62% of these complains involved product and good relating to importation and production of manufacturing goods or inputs and involved issues such as subsides, taxations, trading rights or intellectual property theft given that the current developmental agenda of the Chinese government. India, other the other hand, mostly was brought up on charges of AoA agreement and subsides. This is due to the support for local famers to up surge production to help elevate poverty in rural India. An average of 26% of the value of agricultural production and an export subsidy Rs 5,000 an acre is given to famers in an effort to reduces rural poverty (Layak, 2019).

Table 15. Developing countries as respondent in completed cases

Types of cases	Cases brought against China by:				Cases brought against India by:			
	DCs		LDCs		DCs		LDCs	
	Won	Lost	Won	Lost	Won	Lost	Won	Lost
AD	0	7	0	1	0	2	0	0
CVM	0	3	0	2	0	3	0	0
Sgs	0	2	0	0	0	0	0	1
AoA	0	0	0	1	0	2	0	1
Other	0	2	0	0	0	1	0	0
Total	0	15	0	4	0	8	0	2

Source: Worldtradelaw.net 2020

China lost 18 and India 10, but Korea only 2. Some countries win as a respondent. Korea won 3 and Brazil and Mexico 1 each. China and India export oriented economies make them an easy target to lose in cases involving subsides and dumping. Out of the 8 cases lost by India, 3 (DS 456, 146, 175) of them involved issues relating to manufacturing inputs goods such as solar modules and Automobile inputs. Two cases (DS 50,79) 0f the issues have to deal with patent protection on agricultural products or produce and 2 cases (DS 360,430) involving import restriction or additional duties. This show a pattern that once a developing country begins an export-oriented country, they are like to get entangled in similar issues as India and China mostly because there are more likely to violate one or two agreements.

5.2.2 Dispute on Agriculture and Developing Countries.

To reveal some significant trends in agriculture disputes (given that most developing nations are agro-based economics) over the period 1995-2019, countries are classified according to the World Bank is income categories: high-income countries, upper-middle - income countries, lower-middle - income countries, and low-income countries (World Bank, 2019).

It is noted that, to date, low income countries have been neither the respondents nor the complainants in an agricultural dispute. This should not be unexpected considering that low-income countries account for a comparatively small share of global food trade—less than 1% of global food exports and less than 2% of global food imports in 2018 (UNCTAD, 2019)—and a smaller share of the membership of the WTO. Agricultural trade between low-middle-income countries has increased overtime but is still relatively small, accounting for around 12% of global food exports and 9.5% of global food imports in 2018 (UNCTAD, 2019).

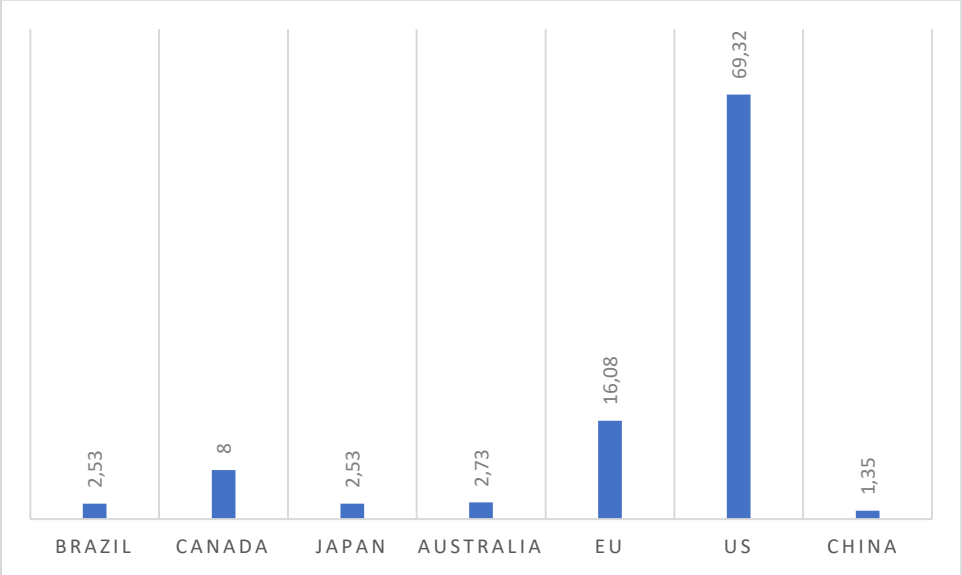
Overall, low-middle-income countries were complainants in three situations, while by comparison, low-middle-income countries were respondents in 19 disputes. High-income members were complainants in about two-thirds of the total agricultural disputes involving the AoA and were respondents in about 57% of the cases. More specifically, 86% of all disputes concerning the AoA involve at least one high-income country. While high-income countries were complainants in almost 88% of disputes in the first five years of the WTO (29 out of 33), since 2015 high-income countries brought just 2

disputes (out of 8 total) concerning the AoA. During 1995 to 2019, the upper-middle - income participants accounted for 32% of complainants and were respondents to 24% of agricultur-related disputes, but their participation in conflict resolution proceedings has grown over the last 25 years representing, in part, their increasing share of global food trade. One basic reason for the few cases on Agricultural trade is the flexibility and easy for countries to navigate for countries to the AOA which result in less disputes.

5.3 Compliance with DSB Rulings: who complies and who does not?

During the period under review (1995-2019), 43 suspension requests (in accordance with Article 21.5 of the DSU) were submitted to the DSB. According to the figures in the DSB report, there were 153 WTO disputes between, in which at least one violation was found. Such are the situations where a violation is found when enforcement is required. Using suspension requests as a substitute for non-compliance (based on the rational presumption that, if a losing Member State refuses to comply, the winning State will make a request for suspension), this suggests an explanation for the overall compliance rate of around 71%. On the one hand, this is not a terrible rate and illustrates why a Member State will not comply. In figure 15, we can see, it is not proportionately spread among all Member States their percentage share of targets for suspension.

Figure 15: Targets of suspension requests under article 21.5 of the DSU.



Source: Worldtradelaw.net 2020 Note the figures are in percentages

It shows that the United States maintains a disproportional share of the number of suspension requests, i.e. More than two-thirds of them (69 %). The United States also maintains a disproportionate share of the number of enforcement procedures (46% of those that went to committees and reported; 38% of all consultations sought under Article 21.5) The US share of world imports is just 15%, which is, of course, significantly smaller than its high share of enforcement procedures and suspension demands. The US was also the respondent in a high proportion of all the panel reports released, i.e. 40% of them. However, this high rate of US involvement as a respondent to trade violation lawsuits is still much smaller than its share of Article 21.5 requests.

There were 79 complainants who won in cases against the United States. There are situations where there is a scope for termination of petitions in the event of non-compliance. In fact, 28 of these complainants ended up submitting suspension applications against the US. This corresponds to 35.44% of the total, 47% of these were developing nations. In other terms, more than one third of the complainants who have won over the United States in conflict resolution proceedings have been compelled to resort to trade sanctions to achieve approval from the United States .The second largest offender in the WTO is the European Union, which was the object of 16.8% of suspension requests. The EU's share of enforcement commissions is 16.7% and 20% of approval consultations requests. These figures are significantly higher than the EU's share in world imports, which is 14.7%. Developing nation made up about 39% of such request against the EU.

It has been speculated by some scholars including Martin Khor that sone countries like US like to wait and play delayed tactics until they become targets of suspension request under article 21.15 and then move to compliance given them an enough time to find solutions which will not affect them negatively in economics sense. I did not present any fact to this speculation either, but I could see several countries went in to complains more once there was a suspension request against them. This shows that the US and other developed countries are manipulators of the DSM and this unfair to the countries that won in these cases

However, if we equate the number of times that developing countries have been witnesses to panel proceedings to their share of suspension requests, we get a very different view. Developing countries were the respondent in the panel reports released, corresponding to 31.4%. On the other hand, there was only one suspension proposal aimed at a developing country, namely Brazil (DS46 Brazil –Aircraft (Canada), corresponding to less than 3% of overall request. There were 52 complainants that prevailed to a potential suspension request against developing nations, and however, only one of the complainants had to revert to such a request. We would presume that in all those situations, the developing complied with the DSB rule and abolished the non-consistent intervention. The developing countries share in compliance consultations requests is 20% (including those of China and Korea), which is also lower than their share as respondents in panel procedures. Their share in compliance procedures where a panel report was issued is lower, only 16.7%. This shows that developing countries are quick to comply with rulings in other to avoid becoming targets of article 21.

The strongest criticism of the DSM stresses its lack of enforcement powers. If a panel or appeals body report has been adopted, the role of the DS body is extremely limited. The Commission cannot enforce penalties on the respondents. The DS body can only give the right to appeal against the accused to the complainants. As a result, decisions can have only a "modest direct impact" on the outcome of conflicts (Busch and Reinhardt 2000). A bias exists in that the successful outcome of disputes in the WTO can lead to bias in the participation of countries in the proceedings. When developing countries do not trust developed respondents to obey the advice of the DSB, they do not consider expensive trade disputes worthwhile and may therefore not launch disputes

against developed countries, but rather against developing countries (South-South disputes). During 1995 and 2004, 8.7% of cases brought before the DSM supported developing countries, a number that doubled during 2005 and 2014, hitting 16.4% and has been fivefold since then. Since then till now the same or similar issues involing similar or same goods have been disputed on. Almost 48% of cases between 1995 and 2004 mirror cases between 2005 and 2017.

5.4 How long do WTO dispute settlement procedures take?

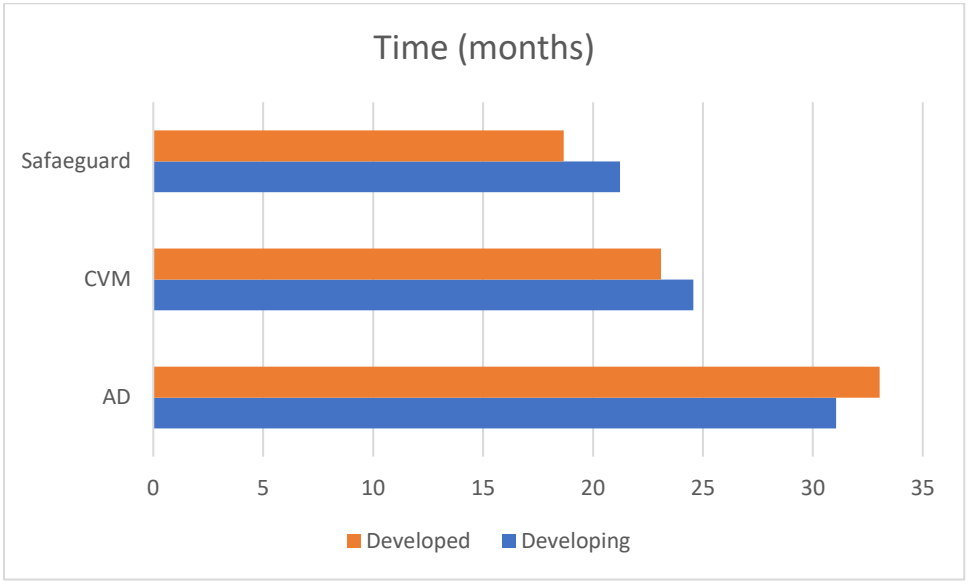
In order ,to find the time spend on cases in the DSM, the difference the time between the date of the request and the date of its adoption by the DSB (whether the panel decision has been appealed) were calculated. consideration was not given such requests that had been resolved after consultations or until the panel could decide on the conflict, but rather those where a detailed panel report had been released. There were 210 such cases, out of 593 consultations made between 1995 and 2019. These panel procedures ended with 191 reports. The WTO conflict mechanism was inadequate to settle conflicts within the timeline that the DSU drafters had sought to enforce. The average length of the request for approval of consultations was considerably longer than the usual 15-19 months recommended by the DSU for a procedure involving an AB appeal, namely: 23.91 months for conflicts that began during 1995-2019. Dispute involving developing nations on the other hand spent on the average 27.99 months once they began. The reasons such delay is maybe beyond the scope of this article. However, some tentative assumptions can be made. At least some of the reasons of the delay are listed in the official explanations of the dispute resolution procedures.

Whiles looking at the cases we discovered that cases involving developing as both respondent and complaint spent an average of 3-6 months more compared with cases where developing countries were either respondent or complaint. This can be attributed in part to the increased number, size, and complexity of the disputes and to the large volume of evidence involved. The lack of page limits in the dispute settlement procedure allows the parties to submit lengthy submissions accompanied by extensive exhibits. For certain cases, for particular those including the WTO Agreement on Sanitary and Phytosanitary Measures (SPS), committees and parties also include specialist experts in the proceedings, contributing to the workload of the panel. Bown (2018) also cited legal capacity as a major reason as panel go out of their way to grant special request to developing members. In several disputes, multiple panel reports were issued as the complaint was brought by more than one complainant (one report for each complainant). Such accounts deal with somewhat similar, though not equivalent, claims. To prevent double counting, the argument presented by only one of the complainants has been included in this list.

After the result on average time spent on all cases involving developing countries, we to move examine the average time spent on cases involving dumping, subsidies and countervailing measures, and safeguards measures involving developing countries. We added time spent on the case involving these issues were developing countries where either the complaint or respondent mins cases settled or mutually terminator and ongoing cases, then find the average time between request for consultation and panel

report adopted results are shown in figure 16 below. The calculation took into effect both when developing countries when complaints or respondent as there was no significant different in the timing when there were either.

Figure 16: Average time spent on disputes involving developing countries compared with developed countries



Source: Worldtradelaw.net 2020

The long term of the dispute settlement process, up to four years in which competing developing countries lose their market niches and export opportunities. Submission to the WTO by Mexico, TN / DS / W/23, 4 November 2002. The paper noted that the average time between the establishment of a panel and the expiry of a reasonable period of time (to be complied with) was 775 days or more than two years, which increased to 1507 days or more than 4 years after the consultation period had been included (not to mention the period of enforcement, where there may be significant delays, particularly when a Member revises its legislation, and then the new one). Several developing countries have also been pressured to implement measures, such as voluntary export restrictions and other steps in the grey field, simply to escape the difficulty and complexities of a lengthy process. Indeed, these initiatives were among those targeted at dismantling a robust dispute settlement mechanism. It is reassuring, though, to remember that a developing country such as Brazil has entered a level of maturity that enables it to use the WTO DSS as a tit-for - tat strategy. Brazil did not hesitate to bring an anti-dumping lawsuit against the US (against the Byrd amendment clause for the distribution of anti-dumping duty to the petitioning US industry) specifically affecting Brazil's steel sector in response to a challenge to the mandatory licensing clauses of Brazil's pharmaceutical patent law. Both charges have dropped as part of a settlement. This could account for the reason behind the length of cases as countries seek better settlement options.

Anti-dumping cases takes longer time during due to the complexity of the subject. An anti-dumping investigation calls for a thorough analysis of the information submitted by different parties, such as domestic manufacturers, exporters, importers, consumers, which requires on-site inspection of the evidence to the extent possible. Anti-dumping proceedings are complicated, time-consuming, and demanding. The through sophistication of existing transactions, technical innovation and globalization of development and the execution of complicated anti-dumping proceedings within the specified deadlines are obstacles to the anti-dumping authorities of all countries. United States — Anti-dumping (DS325) Determination Regarding Stainless Steel from Mexico Request for Consultations by Mexico,1, January 10, 2005. The panel has announced that its determination will be delayed at least until June 2006 due to a technical definition involved in the subject matter. The 'Friends of Antidumping'(a group of scholars on dumping) and others suggested that developing countries would have special laws that would provide these countries with 'major preferential and unequal care' when faced with anti-dumping legislation.

Governments in developing countries are increasingly under immense pressure to subsidize industries or businesses within sectors even when there is no global pandemic or crisis. This is due to a natural desire to maintain employment, to improve economic development regions and to increase exports. It is also difficult to ignore the cries of the suffering sector for aid, although at the other end of the continuum, policymakers are tempted to interfere in order to allow domestic companies a larger role in sectors creating new technologies and hoping to generate potential prosperity. The interpretation of benefit and consequently was evidently an issue as the parties try to skew the interpretation to gain advantage as seen in DS70 and DS212 Canada – Measures Affecting the Export of Civilian Aircraft complained by Brazil.

We now turn to the analysis of the length of safeguard measures cases to date, which in a number of respects are unsatisfactory. The problem rests, to a large degree, in the fact that the WTO Appellate Body participates in a textual analysis without everything else, but the WTO document on safeguard measures is anything but satisfactory this highly evidenced in DS121 Argentina-Safeguard Measures on Imports of Footwear which spent almost 17 months over definition of text in the safeguard agreement and later when to the AB where the dispute panel was overruled. This shows that that legal capacity plays a vital role in DSM and the nature of the legal text can cause serious delay in dispute settlements.

Section 6: conclusion

This paper presented the findings of a review of several aspects of the WTO dispute settlement system, with special focus on developing countries. The paper evaluated the system by asking these question : (1) to what extend are developing countries using the DSM as compared with developed countries?; (2) have developing countries challenged other member states and won their cases against developed countries on the basis of economics, legality and/or on the special provisions provided to developing countries in WTO rules?; (3) do developed countries complied with rulings when they lose against developing nations; (4) how long do disputes take at the DSM?

The mechanism has been very successful so far, which appears to reflect the fact that Member States have confidence in the capacity of the system to settle conflicts and to protect their interests in the context of the trade agreements set out in the WTO Agreements. At the same time, the system is far from flawless and several Member States are eager to improve its efficiency and address some of the challenges that have arisen. The analysis indicates a substantial decline in the number of cases dealt with by the program over the years. So far as users are concerned, the numbers indicate a strong domination of developed countries, and in particular the US and the EU, both as complainants and even more so as respondents who were claimed by other Member States not to have complied with their commitments under the protected agreements (compliance).

Developing countries, which constitute about 53% of all WTO Member States, account for just about 43% of the complainants and even fewer of the respondents. What is particularly troubling, though, is that the least developed nations are virtually non-existent in the system the argument here they account for very little in world trade and are marginalized from globalisation. this is a serious problem given that the aim of the WTO is to offer a platform for reducing obstacles to international trade and maintaining a level playing field for all, thus leading to global growth and development The classification of the most successful active user was made even more evident when using the World Bank's categorization of states according to their gross national income per capita. Indeed, the study reveals a correlation between these income level and the number of requests for consultations in dispute settlement systems, and a much stronger correlation between GDP and the number of request for consultations. However, once a developing country decides to initiate proceedings, it is not more likely to settle than developed countries. In accordance with the DSM, participants are expected to have an internal capacity to bring trade infringements to the WTO. Although these capacity problems are country-specific, it has been said to be the main reason developing countries like to settle in some cases just to save cost.

Turning to the issue of compliance with the DSB decisions, the statistics indicate that though there is a high level of compliance, some procedures resulted in non-compliance reports. On the basis that if a member State fails to comply with a legal order, a case for suspension will be lodged against it, the figures show a cumulative DSB enforcement

rate of around 71%. The review of all the suspension requests also found that the United States was the country most often hit by these demands, with more than two thirds of them (69%.) the EU accounted by 16% of the suspension against the whiles China had none. While developed countries were the respondent in almost one-third of all panel hearings, there was only one suspension request directed at developing countries. it is the speculation that developed country intentionally decided not to comply until they become targets of suspension requests under article 21.5 of the DSU as a delay tactics to find ways to avoid a negative effect of the rulings which have been deem as not fair considering the opportunity cost by the other party involved. Even though,the analysis did not pin point the exact reason why developed countries dominate suspicions request it is my believe that the speculations can partly account for it.

We then turned to review the length of the DSU procedures over the years since the WTO was created. We observed that the average length of the request for consultations for the implementation of the DSB guidelines was significantly longer than the period recommended by the DSU, namely: 23.91 months for conflicts that began between 1995-2019, while the conflict affecting developing nations, on the other hand, lasted an average of 27.99 months after the request. The causes for this degradation are discussed in the text.

The findings of this research informs that participation is the DSM is dependent on the capabilities of the Members states and that review of the DSU should put this into consideration when deciding what needs to be amended and improved in the WTO DSM. Among other things, Member States need to find ways to make the system more accessible to poor countries, both at the stage of detecting and litigating injurious violations against them. This also includes financial and technical aid to developing countries.

The question of if the DSM can be you as an indicator for the continuous participation of developing countries in the WTO is not an easy “yes “ or “no” but from the analysis above in my opinion the continuous participation of developing countries in the WTO is a better decision and choice but measures ought to be taken to strengthen the mechanisms of implementation of the DSB guidelines and to discourage delay tactics. The current approach of offering only prospective solutions needs to be checked and incentives could be added to facilitate early adoption of the recommendations. Obviously, no amendments introduced to the DSU will alter the asymmetric allocation of power among WTO members, but they should tackle it better and seek to minimize it.

There is also a need to address the ever-increasing duration of dispute settlement procedures. One way would be to hire more experienced lawyers to assist the Secretariat in the procedures and more translators to streamline the translation process. However, this may not be the only way to do this. It is possible that the Secretariat is already gaining too much influence on the procedures, and even on their own, that ways should be sought to allow panellists to draft reports, as the arbitrators do in most other systems.

One wants to find ways of the massive duration of panel papers, much like what they were during the GATT era.

6.2 Limitations of the study

The limitation of the data is the technical legal context in which they are framed. It is very difficult in several cases to understand what the panel decision means in a single case. There can be a violation and non-violation, that is "win/lose" is not really a descriptor that can be tied to WTO disputes. A party might win one small notification violation, but lose on all the larger substantive claims, so either party might count that as a "win." Another limitation of this study had to do with the cases in contention or appeal. The available data are not collected to address the research question. It is not uncommon that some important third variables were not available for the analysis. One of the major limitations of these study is the inability to follow up and collect all the necessary data to provide regression analysis to answers why some of these statistics exist. There was also limited for this thesis.

6.3 Suggestion for future research

In future the research the researcher should add other data such as price of the commodities to verify if disputes increase one commodities when their prices increases and collect data on the actual cost of ligations involved in the case to assert if cost really influences developing countries to settle. Also find out if there is a reciprocal effect in the cases. Most importantly future researcher should consult person with a legal background to gain a better understanding of the DSM reports and DSM agreements.

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